An Expoſition of the Kings Prerogatiue, collected out of the great Abridgement of Iuſtice FITZHERBERT, and other *old Writers of the Lawes of England*, by the right Worſhipfull Sir WILLIAM STANFORD Knight, lately one of *the Iuſtices of the late Queenes* Maieſties Court of Common Plees.

Whereunto is annexed the Proces to the ſame Prerogatiue appertaining.

LONDON
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Cum priuilegio.

To the right honorable Sir NICHOLAS BACON *Knight, Lord keeper of* the great Seale of England, Richard Tottell *wisheth health and long life, with increase of honour.*

NOt long sithens, right Honourable, & my especiall good Lord, there was deliuered vnto mee a Collection of the Kings Prerogatiue, which Maister Staunford had gathered and dedicated vnto your honor: which work because it is thought wel of by the Sages of the law, & wel worthy to be printed, I am therfore the bolder to put it in print & publish the same. And although the said master Staunford very shortly after that hee had dedicated the same booke vnto your Lordship, were for his wisedome, grauitie, learning, integritie, & sincere dealings, aduaunced to bee a Iudge in the chiefe Court of this Realme for common plees, and for his good seruice therein was by iust de-

ſert made Knight, and albeit that your Lordſhip alſo ſithens that time haue atchieued the place, title and degree of high honor by the iudgement & calling of the Queenes moſt excellent Maieſty: Yet I haue printed the Epiſtle dedicatorie of the ſaid worke, in the ſame termes that the Authour thereof vſed, and with the ſame ſtile that your honor, & both he thē had, whē he dedicated the ſaid worke vnto your Lordſhip, as a monument and token of the mutuall and long continued amitie betweene you: moſt humbly praying your Lordſhip to accept in good part, according to your accuſtomed goodneſſe, this my boldneſſe with your honour, and to pardon the ſame.

This 20. day of Nouember.

Your honours moſt bounden

Richard Tottell.

Gulielmus Stanfordus Nicholao Bacono Regiæ Maiestati à Tutelarum Procuratione S.D.P.

QVanquam Anglicanę leges, (amice singularis) haud minorem merentur laudem, quam Iudex Forteſcueus, libro de earum laudibus conſcripto, eis tribuere videtur: tamen quoniam earum cognitio tam procul nobis diſſita ſit, profectio ad eam tam ſupra modum longa ac operoſa, tum vię & ſemitæ tam aſperæ, tam ſalebroſæ, tam inamœnæ ſint, vt ad ſui aditum pauciſſimos inuitet, quam plurimos abſterreat, vel potius auertat: Optarem in tanta iuriſperitorũ turba, quam Anglia nunc habet, aliquid excogitari poſſe, leuandis legum Studioſis, pro longo iſto ac moleſto itinere, vt propiore ac commodiore via ducti, valerent & proficiſcendo & abſoluto itenere, alias deguſtare literas: quibus non ſolum legalem ſcientiam multum illuſtrarent, ſed & munia eis a Regia Maieſtate mandata, tum pulchriùs, tum honorificentiùs adminiſtrarent. Id quod (meo iudicio) commodiſſimè fieri poſſit, ſi tituli, in magna (quam vocãt) Fitzherberti Epitome, vel a Iudicibus noſtris, vel ab alijs legũ peritis, ſedulo forent euoluti atq; elaborati, hoc eſt, omni titulo, in claſſes ac ordines diſtributo, ſingulis eorum actis ac cauſis certæ legum regulæ ac Maximæ præſiderent. Exempli gratia. In breuis titulum cadere poſſunt hæc, videlicet, Forma, vitioſa Nomenclatura, ſeu perſonæ, ſeu vici, Eadem res bis petita, Obitus vel actoris vel rei, Nominis alterutrius partis pendente lite mutatio, cæteraq; huiuſmodi, quæ nunc nimis longo titulo ſparſa tam tumultuarie reperiuntur, vt multo maiorem tum eruditionem, tum ſudores, tum vigilias exigat eorum diſtributio, quàm rectè diſtributa ediſcere. Et tamen non poſſum committere, quin tantæ epitomes ſcriptorem, vel

amplissimis laudibus veham, qui summa sua doctrina, exactissimo iuditio, immensis, ac pene dixerim exanclatis laboribus, tam numerosam voluminum multitudinem, quibus vel legendis vix vnius hominis ætas (quantumlibet viuacis) sufficeret, in vnum duntaxat volumen atq; adeo epitomen contraxit, vt nunc nostratibus iurisperitis modo volentibus minima opera componere liceat quippiam tam facile, tam vtile, tam frugiferum: vnde studiosi dimidiato tempore quo ante hac legibus obdormire sint vsi, cum maturiorem, tum certiorem notitiam assequerentur. Quo nomine, rei mihi tam vehementer expetitæ typum quendam proposui, ac quasi primas inde lineas duxi, recipiens ad me hmoi p̃dictorum titulos, qui regiam p̃rogatiuam spectant: non quod sum aliqua ex parte dignus, rem tam eximiam, tamque sublimem tractare, nec quod eruditione id præstare valeam: Siquidem de meo, nihilo plus hic est quam collectio ac dispositio tantum earum rerum, quæ eisdem titulis includuntur: Sed magis quod istud meum commentitium, qualecunque sit, tibi semp destinaueram, id quod in nullum alium præter hunc titulum, commodè experiri potui, tum quod ad magistratum tuum Regij procuratoris tutelarum, maxime pertinere videbatur, tum quod compertum habeo, te iurisprudentiæ incumbẽtem, hunc quem proposui morem hactenus obtinuisse: quod fecit vt reliquos tuos contemporaneos eruditione multis stadijs præcurras! tum denique quod tuum iuditium super hisce rebus, in quibus assiduè versaris ac exercitaris, requiro. Certus me hic rem habere cum homine tam amico, vt si quid lectione dignum inuenerit, id pergrate sit accepturus, sin minus, æqui bonique consulturus, reliquum quod habet vitij emendaturus, aut saltem ad id cõniuere velle confido. Proinde istud, quicquid est, tibi nuncupo, lege, ac pro tua voluntate fruere.

Vale.

To the right worshipfull and his singuler *friend Nicholas Bacon, the* Kings Atturney of his Court of Wards *and Liueries William Staunford wisheth health,* long life, and prosperous succesſe.

ALbeit the Lawes of England (right singuler Friend, are worthy no lesse honour, prayse, and commendation, than Iustice *Fortescue* in his booke written of the prayse thereof, doth attribute and giue vnto them; yet for as much as the knowledge of the sayd Lawes is placed so farre off, the iourney therunto so exceeding long and painfull, and the wayes and pathes so rugged and vnpleasant: I would wish that amongst such plenty of learned men as be at this day some thing were deuised to help the students of their long iourney, that they (beeing led a more neere & pleasant way) might both as they went, and after they came to their iournies end, gather some other knowledge, not onely therwith to garnish their owne science, but also the better to serue in such honorable roome as they bee called to serue the king and soueraigne lord in. Which thing might well come to passe after my poore mind, if such titles as be in the great abridgement of Iustice *Fitzherbert*, were by the Iudges or some other learned men laboured and studied, that is to say, euery title by it selfe, by speciall diuisions digested, or ordered and disposed in such sort, that all the Iudiciall actes and cases in the same might bee brought and appeare vnder certaine principles, rules, and grounds of the said Lawes. As for example, vnder the title of Briefe might come these titles, Forme, Vi-

naming of the person, misnaming of the Towne: One thing twise demaunded, death of the plaintifes side, death of the defendaunts side, chaunging of the name of the plaintife or defendaunt, hanging the suit, with many such other like which now as things scattered abroad, and out of order, lye hidden within the said long title, that it requires much more learning, paines, and studie, well to order and dispose the matter in the same, than (after order made) to learne and beare it away. And yet surely there cannot be too much prayse and commendation giuen vnto that great learned man, the Authour of the said great Abridgement, which by his great learning, exact iudgement, and intollerable paines, brought such a infinit number of volumes (to the reading whereof a mans life would scant haue sufficed) to a much more lesse and narrower compasse, whereupon now these learned men with lesse payns might compyle the thing that should be so sasie, so profitable, and fruitfull to the Students thereof, that in halfe those yeares they now lye sleeping in, they might come to a riper and more certaine knowledge, and better iudgement: For which cause I haue drawne as it were a patterne of the thing I so much desire, taking vpon me such titles as appertaine vnto the Kings Prerogatiue, not as one in any part worthy to treat of a thing so high and pretious as that is, or in learning sufficient, or hable thereunto (for of mine owne here is nothing more than onely a collection and disposition of that that is already contayned in the sayd tytles) but rather because I haue alwayes meant this deuise vnto you, which I could not do or practise so well vpon any tytle, as vpon this that appertayneth vnto your Office of Attourneyshippe of the Wards and Liueries, partly for that I know your selfe to haue obserued the like order in your owne study, which in few yeares hath gotten you aboue others, the great learning you haue, partly also for that I couet your iudgement in these matters, wherewith you be daily in vse and exercised, knowing

knowing that I haue to doe herein with one so much my friend, that if there be any thing worthy the reading, hee will take it thankefully, and if not so well, yet will hee take it in good part, the rest that is amisse hee will beare it with me. This therefore whatsoeuer it bee, I dedicate vnto you, read it, peruse it, and make of it what you will. Fare you well from Greyes Inne the vj. of Nouember Añ Dom 1548.

(*.*)

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FINIS.

¶ Prerogatiua Regis, edita Añ 17. E. 2.

¶ *Le Roy auera le gard de touts lour terres que tient de luy en chiefe.* Chap. 1.

DOminus Rex habebit cuſtodiam omniũ terrarum eorũ qui de ipſo tenent in capite per ſeruitium militare, de quibus ipſi tenentes fuerunt ſeiſiti in dominico ſuo vt de feodo die quo obierũt, de quocunque tenuerint per huiuſmodi ſeruitium, dum tamen ipſi tenuerũt de rege aliquod tenementum ab antiquo de corona vſque ad legitimam ætatem heredis: Exceptis feodis Archiepiſcopi Cantuarienſis, Epiſcopi Dunolm̃ inter Tyne & Teſe, feodis Com̃ & Baronum de marches de terris in marchia vbi breuia domini Regis non currunt. Et vnde prædictus Archiepiſcopus, Epiſcopus, Com̃ & Baroñ habeant huiuſmodi cuſtodiam, licet alibi tenuerunt de Rege.

Prerogatiua, is as much to ſay, as a priuiledge or præminence that any perſon hath before another, which as it is tolerable in ſome, ſo is it moſt to be permitted and allowed in a Prince or Souereigne gouernour of a Realme. For beſides that, that he is the moſt excellent and worthieſt part or mẽber of the bodie of the common wealth, ſo is hee alſo (thorough his good gouernance) the preſeruer, nourither, and defender of all the people being the reſt of the ſame body. And by his great trauels, ſtudy and labours, they enioy not only their liues, lands and goods, but all that euer they haue beſides, in reſt, peace, and quietneſſe, as Seneca de conſolatiõ ad Polibium ſaith; Omnium domos illius vigilia defendit, omniũ otium illius labor, omnium delitias illius induſtria, omnium vacationem illius occupatio. For which cauſe the lawes do attribut vnto him al honor, dignity, prerogatiue, & præminence

which

which Prerogatiue doth not onely extend to his owne person but also to all other his possessions, goods, and cattels. As that this person shall bee subiect to no mans suit, his possessions cannot be taken from him by any violence or wrongfull disseisin, his goods and cattels are vnder no tribute, toll, or custome, nor otherwise distrainable: with an infinite number of prerogatiues more, which were too tedious heere to recite. Yow be it, for so much as in euery Realm the kings Prerogatiues are no small part and portion of the profits and commodities of the Crown of the same, and namely within this Realms of England, it hath beene thought good heretofore to declare and set forth in writing certaine of the most highest and weightiest matters and articles touching the said Prerogatiues. And hereupon was there a declaration made in writing by authoritie of Parliament holden in the seuenteenth yeare of the raigne of King Edward the second, the beginning whereof is in maner and forme as is aboue written: Yow be it, this Parliament maketh no part of the Kings Prerogatiue, but long time before it had his being by the order of the common law, as may plainely appeare by them that haue written before the making of the said statute of prerogatiue. For Glanuil that was chiefe Iustice in king Henry the seconds daies, writing of this matter, saith in this wise li. 7. cap. 10. Notandum quod si quis in capite de dño rege tenere debet, tunc eius custodia ad dominum Regẽ plenè pertinet: siue alios dominos habere debeat ipse hæres siue non, quia dñs rex nullũ habere potest parẽ, multò minùs superiorẽ. Also Bracton which wrot in the later time of K. Henry the third saith, Lib. prim de custod' & marit dominorũ: Si aliquis hæres terram aliquam tenuerit de domino rege in capite, siue alios dños habuerit siue non, dominus rex alijs præfertur in custodia hæredis, siue ipse ab alijs prius feoffatus fuerit, vel posterius, quũ Rex parẽ nõ habet in regno suo. Both these writers do not onely agree in euery point, but also giue a reason why the king should haue the prerogatiue contained in this first

chapter

chapter. Also Britton, another old writer, which wrote his booke in King Edward the firsts name, saith, *Lib. 3. cap. 2. Des heires nequedent si ils y eient ascuns qui auncester morust seisie de ascun terre tenu de nous en chiefe des auncientes demeans de nostre Corone, volons auer les gardes de toutes les terres dont garde appent, que deuient descend a ceux heires come lour heritage, ouesque toutes les blees en tiels terres troues maintfoits de qui fees que les terres sont.* Britton heere not onely agreeth with the other, but also giueth the King the corne growing vpon the groundes which the Kings tenant held at time of his death. Also in the great abridgement of Fitzherbert Prerogatiue 26. you shall finde in Anno 21. Hen. 3. written in this manner: *Nota quod lex Angliæ & consuetudo eiusdem est quod à quibuscunque aliquis feoffatus fuerit, dum tamen a domino Rege aliquo tempore feoffatus fuerit per tenementum quod tenetur per seruitium militare, quod dominus rex habeat custodiam omnium terrarum & tenementorum tam de feoffamento aliorum, quàm de feoffamento proprio.* Which text, if a man will any thing wrest, hee may make the Kings prerogatiue more liberall than is made or declared by this Statute, or any other the writers before remembred, for it extends to any lands holden of the King by Knights seruice, whether they bee holden of the King in Capite or not: but forasmuch as the said other writers haue written so plainely in this matter, wee will stand to them, and extend the Prerogatiue no further: howbeit (as I said) all those writers beeing so long before the making of this Statute, doe plainely argue and produe that this Statute doth but confirme and declare that that was the common Law before, vnlesse wee would doubt of the time of the making thereof, as Littleton doth M 15. E. 4. f. 12. & 13. but without doubt it was made in King Edward the seconds time, and that plainly appeareth by the words contained in the 4. chapt of this Prerogatiue, which bee these: *Et illa voluntas tempore Regis H. patris Regis E. æstimari consueuit &c.* Which words were not written in King

Edward the firſts daies, for then the words had beene *Patris noſtri*, ſo that (as I thinke) it is not to be doubted, but that it was written in the time aboue limited and expreſſed. Then goe wee to the expoſition of this firſt chapter of Prerogatiue. The words bee: Dominus Rex habebit cuſtodiam omnium terrarum eorum qui de ipſo tenent in capite per ſeruitium militare. Theſe words goe generally to all the kings tenaunts, that is to ſay, as wel to his tenants for terme of life, as to his tenants of eſtate of inheritance, if it ſo bee, that hee that is in the reuerſion haue the ſaid reuerſion by deſcent, and bee heire vnto the ſaid tenaunt for terme of life, not forcing whether hee haue the reuerſion by deſcent from the ſaid tenant for terme of life, or els from any other auncеſtour: as take the caſe to be this, a man holdeth no lands of the king, but onely as tenaunt by the curteſie, and thoſe lands are holden in chiefe by knights ſeruice, and the ſaid tenant by the curteſie is ſeaſed in his demeſne as of fee of lands holden of other Lords and dyeth, the lands holden of other deſcend vnto him in the reuerſion, which is in deede nert heire vnto the ſaid tenaunt by the curteſie: in this caſe the king ſhall not onely haue the wardſhip of the Lands that were holden by the curteſie, if the ſaid heirs bee within age, but alſo the lands holden of other by vertue of this prerogatiue. And if the ſaid heire were of full age at the time of the death of the ſaid tenaunt by the curteſie, the king ſhall haue primer ſeaſon both of the one land and of the other, as it appeareth in the new Natura breuium fol. 258. Like law is it, if a woman bee indowed of lands holden in Capite, and is ſeaſed of fee ſimple of lands holden of other and dyeth ſeaſed, and they deſcend vnto the heire which is in the reuerſion: in this caſe the king ſhall haue both theſe lands by vertue of this Prerogatiue, like as hee ſhall haue in the other caſe before, and that may you ſee in 26. hb. aſs. P. 57. for in both theſe caſes they bee the kings tenaunts, and hold of him by Knightes ſeruice in Capite, for tenaunt in dower

in

in the Kings caſe holdeth not of the heire, but onely of the King, as it ſhall appeare more fully hereafter folio. 10. But if hee in the reuerſion bee not heire of the lands holden of other in the caſes aboue remembred otherwiſe it is. But what if hee in the reuerſion haue the ſame reuerſion by purchaſe, and not by deſcent, whether ſhall the king then haue his prerogatiue or not? and as to that it ſhould ſeeme by the new Natura brevium fol. 259. that the King ſhall haue his Prerogatiue in that caſe alſo, for there the remainder was to the heire and to his wife, and to his heires of their two bodies lawfully begotten, and the husband in the remainder did ſue liuery, howbeit againſt the law as meſeemeth, Ideo quere: but if the caſe in the ſaid new Natura brevium had beene, that lands holden by knights ſeruice in Capite, had beene giuen to one for terme of life, the remainder ouer in fee, which perſon in the remainder hath iſſue and dyeth, and the tenaunt for terme of life holdeth lands of other Lords and dieth which deſcend to the iſſue that is in the remainder, here it might be ſayd, that the king ſhould haue Prerogatiue in the whole, like as hee had in ỳ caſes before remembred of tenaunt by the courteſie, and tenaunt in dower, for the like reaſon will ſerue in the one caſe, that ſerueth in the other. The words of the Statute bee further: De quibus ipſi tenentes fuerunt ſeiſiti in dominico ſuo, vt de feodo, die quo obierunt, de quocunque tenuerint. Theſe words rather appertaine vnto the lands holden of other, than to the Lands holden of the king in Capite, as it ſhould appeare by the caſes before remembred, and then by theſe words the Kings tenaunt in his life time muſt himſelfe bee ſeiſed either in poſſeſſion or reuerſion, of thoſe lands that bee holden of a common perſon that ſhall deſcend vnto his heires. For if hee were not ſeaſed thereof, but they deſcend vnto his heire from ſome other auncetor, the King ſhall not haue his Prerogatiue in them, as appeareth

veth in M. 5. E. 4. fo. 19. but whether the kings tenant were
seased of them in his owne right, or in another bodies right
it maketh no difference. As take the case hee were seased of
them but in right of his wife, & hath issue & dieth, his issue is in
the kings ward for the lands that his father held in Capite,
& afterward the wife dieth, the issue being still in ward, the
king shall haue prerogatiue in their lands of the wife also,
because the husband was seased of them as of his demeane
as of fee the day of his death, and so within the cõpasse of this
statut. And this case may you see in M. 13. H. 4. f. 6. And note,
that notwithstanding this statute speaketh but of landes,
yet seruices are to be taken by the equity of the same, as it
is plainly proued by the words of *Diem clausit extremum*,
which saith: *Quantum terræ tenet de nobis, aut de alijs tam in do-
minico quàm in seruitio.* So that if one hold of the kings tenant
by certaine seruices, the king shall haue the seruices in ward,
for they bee in nature and place of the land that is holden, and
so shall it be supposed. And therefore when the king hath
those seruices in ward, and the tenant that holdeth by those
seruices dieth his heire within age, if the said seruices were
knightes seruice, the king shall haue ward by reason of
wardship. But yet by that no prerogatiue in the other
lands of the second ward which are holden of the other
Lords, as it may appeare in Gard. fo. 105. A. 6. R. 2. For the
kings tenant was neuer seased of those other lands, ne yet
of the seruices that they were holden by, and so without the
compasse of this prerogatiue. The Law is, where the
king hath the temporalties of a Bishop in his custodie du-
ring the time the See is vacant, and one that holdeth of
those temporalties by knights seruice dyeth, his heire
within age, the king shall haue the wardshippe of him, and
the reason of it is, because the king hath the wardship of
the temporalties, by reason whereof this wardshippe com-
meth of which temporalties the king hath in warde by

the

the ꝛder of the common law, in iure corone: Fꝛ they bee baronies, which can bee holden of none other than of the King in Capite, and then by the Common Law, (take it hee were no better than a common person) yet his highnesse must haue the wardship of them that hold of those tempoꝛalties by knights seruice, if they fall during the time the said tempoꝛalties be in his hands, wᵗ such lands as they hold of those tẽpoꝛalties, but not wᵗ such lands as they hold of other, and then must the heire thereof when hee commeth to his full age sue a liuery, as shall moꝛe plainly appeare when wee come to the third Chapter of this Pꝛerogatiue. The woꝛds of the Statut beꝛe recited are, In dominico suo, this woꝛd Demeane is not heere taken to bee the very possession oꝛ taking of the pꝛofits, foꝛ if the Kings tenant dye seased but of a reuersion oꝛ of a remainder in lands holden of a common person, and during the minoꝛitie of his son the particuler tenaunt dyeth, the King (this notwithstanding) shall haue this land in ward as he hath the rest, as it may appeare M. 22. H. 6. fol. 18. and M. 15. E. 4. f. 12. So it is if the kings tenaunt dye seased of an aduouson appendant to lands holden of a common person P. 46. E. 3. 11. The woꝛds be further (die quo obierunt) and theꝛefoꝛe if the Kings tenant dye seised, of Lands holden of a common person and a stranger abateth, yet the heire shall bee in ward, and the King may enter, and so is it if the heire recouer by assise of moꝛtdaunc̃ester, as it appeareth in the new Natura breuium fol. 257. & Liuery 28. T. 12. R. 2. but take the case to be ꝑ the kings tenant dye not seised but is disseised & dyeth, whether in this case the king may haue Pꝛerogatiue oꝛ not, and it seemeth that he may, foꝛ in all such cases where the heire hath a right of entrie, the King may enter in name of the heire, and hold it afterward in ward. But if the heire haue but a title of entry oꝛ right of action it

seemeth to be otherwise, howbeit looke for those matters in the said booke of M. 15. E. 4. f. 13. & T. 12. H. 7. f. 20. & 18. li. ass. P. 18. where it is adiudged that of lands holden of the King in chiefe, the king as in right of his ward might seise by a Scire facias vpon a title of entre. And note also that there is somewhat more to bee vnderstanden here than is written or expressed, that is to say, that the said Lands must discend to the kings ward, for notwithstanding the kings tenaunt were seised in his demeane as of fee, day of his death, in lands holden of a common person, yet if the same after his death doe not discend to the Kings ward, but to another heire, the King shall not haue Prerogatiue in them as it appeareth in M. 12. Edw. 4. fol. 18. The words of the Statute bee also De quocunque tenuerunt. But case the Kings tenaunt is seised of certaine things which neither are holden of the King nor yet of any other, whether shall the King haue them in ward or not, as Market, Warren, Rent Seck, or Aduowson en grosse: and as it should appeare in H. 3. H. 7 f. 4. P. 46. E. 3. f. 12. & M. 21. H. 6. f. 11. the King cannot haue them in ward, and yet in M. 15. Ed. 4. fol. 14. some hold opinion to the contrary, therfore inquire and learne what the law will in these cases. The words of the Statut be, Per hujusmodi servicium, that is to say, by like seruice. By these words the lands that are holden of other must be holden also by knights seruice, or els the Statute extends not to them, and yet the Law is taken to the contrary, for if the lands holden of other bee holden but in Socage or free hargage, the King shall haue Prerogatiue in them as it appeareth in P. 24. E. 3. f. 47. for this Statute is but a confirmation of the Common Law, and therefore shall bee taken by equitie, and namely when the Law was so taken in Prerogatiue 25. E. 3. which was long time before the making of this Statute. Howbeit

beit Bracton lib. 1. de custod et releuiis, & Britton lib. 3. C. 2. doth extend this Prerogatiue no further than to Lands holden of other by Knights seruice, therfore enquire for ỹ cause and reason therof. The words be further, Exceptis feodis archepi Cantuar &c. This exception extends not to the body, wherfore the king shal hold that in ward against al men, but it extends to such lands as are holden of these persons exempted by this statute. Put case then that any of these psons purchase a Seigniory since the time of the making of this Statute, shall the King haue his Prerogatiue in the Lands holden of that Seigniorie or not? And it is clere he shal notwithstanding the aforesaid words of exception: for they doe not extend but to such fees as were theirs at the time of the making of this Statute. Then further, for as much as there bee diuers Statutes concerning Wardship made aswell before as since the time of King Edward the second, let vs see whether this Prerogatiue will extend to those Statutes or not, and it seemeth it doth, for asmuch as this Prerogatiue hath beene euer from the beginning as I haue said before? And therefore if the kings tenaunt being seased of Lands holden of a common person, maketh a feoffement thereof by collusion contrarie to the Statute of Marlebridge C. 6. to defraud the Lord of the wardship and dyeth, the king hauing his heire in ward and this matter found by office, shall sease vpon a Scire facias if the collusion be auerrable, or without a Scire fac' if the collusion be apparant, and hold the same in ward by force of this prerogatiue, & that appeareth in T. 9. H. 4 f. 6. So likewise where the statut made in 4. H. 7. C. 17. prouideth that the heir cestyque vse shalbe inward. But case that the kings tenant in capite before the statut in An 27. H. 8. had made a feoffement of Lands which he holdeth of a common person to the vse of himselfe & his heires, and died before that statut,

in this case the King should haue had his Prerogatiue in the Lands so being put in feoffement to an vse, euen as if his tenant had died seised therof, as it appeareth T. 12. H. 7. f. 19. When last of all let vs learne how the Lords whose fées the King hath in ward by his Prerogatiue, shal bée demeaned and ordered for the rents to bée dewe for their seignories during the wardship, whether they shall leese them as they doe the Lands. And it appeareth 29. lib. ass. p. 5. that they had them by peticion at the Kings hands, and therewith agreeth the opinion of Hill' in P. 24. E. 3. fol. 24. and the new Natura brevium fol. 158. Learne the reason of these bookes, for it should séeme to mée the law to bee otherwise, because that all mesne seignories are suspended during the time the King hath the tenancy in ward, if it be not percase for the surplusage of a rent seruice which the mesne may sue for to the king by way of petition. And to say as M. 26. H. 8. f. 10. that the heire shall be charged at his ful age with the said rents it were not reason, for then both his land should bée in ward, and yet bée charged to pay rent for the same: wherefore it séemeth that these bookes are against the Law. And with mée agreeth Bracton in his first booke in the chapter de custodia, where hée saith; Et cum tali ratione sint aliorum feoda in manu domini regis, pred' ratione alij capitales domini feod' illorum nihil poterint exigere de terris & tenementis illis, nec in seruic. nominat nec in auxiliis ad filiam maritandam vel filium primogenit militem faciendū vel in sectis quādiu terre fuerunt in manu domini regis, sed præcipiet vic' quo d hmdi distringere non pmittat. Now be it Bracton in his said booke in the chapter, De releuis saith, that the heire at his full age shall pay his reliefe to euery of his lords notwithstanding he hath béene in ward, quod nota: for in al other cases he neuer paieth relief, that is to say, wher he hath bin in ward, & he maketh no other reasō for it but this, s. qd'

hoc

eſt ſpeciale in rege propter ſuum priuilegium: and ſo is the booke in the 24. yere of king Edward the third. fo. 14. and the 39. yeare of the ſame king, Relief. 7. Howbeit Brittons opinion. li. 3. c. 2. is that the heire ſhall pay no relief to the other lords after he hath beene in the kings ward, & commeth to his full age, and I cannot find that the heire in any ſuch caſe ſhould or doth pay any reliefe to the king that is to ſay where he hath bin in ward: therefore learne what experience teacheth vs in theſe caſes. Moyes leſtatut fait an 2. E. 6. c. 8. en Raſtals collection. Eſchetors 15.

Le Roy auera le mariage de cheſcun, queux terres il auoit en gard. Cap. 2.

ITem Rex habebit maritagium hered' infra etatē & in cuſtodia ſua exiſtēn, ſiue terre & hered' eorundem ſint ab antiquo de corona, ſiue de eſchaetis quæ ſunt in manu domini Regis, ſiue habuerit maritagium ratione cuſtod' terrarum dominorum eorundem hered' nullo habito reſpectu ad prior' feoffamentē licet de aliis tenuerunt.

All that is contained in this Chapter, was the kings prerogatiue by the order of the common law, as it may appeare in the booke of Bracton lib. 1. tit. de herede Sockman in cuius cuſtodia eſſe debeat, and Britton lib. 3. ca. 2. and in a booke M. 24. E. 3. f. 31. & 65. Where it is ſaid ỳ no lord can be more auncient than the king, for all was in him, and came from him at the beginning. And therefore his highneſſe muſt haue Prerogatiue in the bodie of whoſoeuer the infaunt holdeth beſides, be it that the lands are holden of the kings Highneſſe, as of the auncientneſſe of the Crown, or of his new eſchetes, or come vnto him as ward by reaſon of wardſhip. T. 12. H. 4. f. 18. or that his highnes do purchaſe ỳ ſeignory of him that is Lord by poſteriority, or purchaſeth a Mano^r holden of one of his honors, which are his new eſchetes, of which Mano^rs thancеſtrs of the infaunt held by

posteriozitie: in all these cases the King shall be preferred to the wardship of the body and mariage before any other Lord of whom the auncester also held the day of his death by priority of feoffement, that is to say, more auncient feoffement: how bee it in these cases his highnesse shall not haue wardship in the lands holden of the other Lords, because his tenaunt held not of him in chiefe, but onely shall haue preferment in the body and mariage before all other. Then since the Common Law and Statute doth giue the King this Prerogatiue, let vs see whether his Highnesse may by graunting away his Seigniory to an other, graunt also with the same his Prerogatiue to the graunte, that is to say, whether his graunte shall haue the same Prerogatiue in the body of the child, as his highnesse might haue had, in case the Seigniozie had still continued in him. And it appeareth in Prerogatiue 23. M. 12. E. 3. & M. 14. H. 4. fol. 9. that if the King grant the seignozie to another in fee simple, that the graunte shall haue no prerogatiue, because there remaineth nothing in the King of that seigniozie vngraunted. But if the graunt were made to a common person for no longer time than during his life, and the reuersion saued to the King, then learne what the law will in that case, for we haue in H. 5. E. 3. fol. 4 that where the graunt was made to the Quene for terme of her life the reuertion in the King, that her grace had Prerogatiue euen as the King himselfe should haue had, and for none other reason there made but onely because shee held in right of the King. But a man may adde further to that reason, and say that her grace and a common person bee not like, for though shee bee a person exempt from the King, and may sue and bee sued in her owne name, yet that that shee hath is the Kings, and take what shee leseth so much departeth from the King;

and

and therefore all her tenaunts of parcell of her estate may haue ayde immediatly of the King without making her party or priuie thereunto, and so shee holdeth meerely in the Kings right: but a common person doth not so. For the King hath nothing to doe with the thing that hee holdeth during the life of the lessee, how bee it if the graunt bee made to the Quéene for terme of her life the remainder ouer in fee, it seemeth that her grace getteth no Prerogatiue, and so it is said in M. 24. E. 3. folio 65. Like Law is it, if the King graunt an honour to the Lord Prince and his heires Kings of England, it seemeth by the better opinion in M. 21. Edward 3. folio 41. that the Lord Prince shall haue therewith the Kings Prerogatiue, because it is not seuered from the crowne after the fourme as it is giuen, for none shall bee inheritour thereof but Kings of this Realme. And note well that notwithstanding the Law were so that none in this case but the Quéene or Prince might haue the kings Prerogatiue yet if the king, hauing the Seigniory in his hands, after that the ward doth fall, grant the same ward ouer, the graunte shall haue and enioy the preferment of the marriage against the other Lords euen as the King should himselfe, because that notwithstanding any such graunt, yet the king is said still gardeine, and the infaunt driuen to sue for his liuery at the kings hands when hee commeth to his full age, and not at the hands of the graunte, which, in this case, is but onely as a committe. And so is the booke in T. 12. H. 4. 25. Like Law is it in the case aboue remembred where the Quéene hath Prerogatiue and the ward falleth, and shee graunteth her wardship ouer, her graunte shall haue preferment in the mariage before all other Lords. And that also appeareth in H. 5. E. 3. fo. 4:

howbeit that case was inforced by thatẏ the king confirmed the state of the grauntée: like law is it if the King haue a ward of right of his Corone, and granteth it ouer with special words, that is to say, that the said grantée shal also haue ward, by reason of wardship if it fall during the minoritie of the first ward: in this case, if there fall a ward which holdeth by posteriority of the heir that is in ward, yet that notwithstanding the said grantée shall haue the preferment in the ward of the body and mariage, euen as the King himselfe should haue had if he had made no such grant, because it is méerely in the Kings right which remaineth still Lord, and the grantée none other but as it were his cõmyttée: and this appeareth also in the 12. yeare of King Henry the fourth. fol. 25.

Le Roy auera primer seisin de touts les terres, dount son tenant en chiefe fuit seisie en fee. Cap. 3.

ITem Rex habebit primam seisinam post mortem eorũ qui de eo tenent in capite de omnibus terris & tenementis, de quibus ipsi fuerunt seisiti in dominico suo vt de feodo, cuiuscunque etatis heredes eorum fuerint, capiend' exitus eorundem terrarum & tenemẽtorum donec facta fuerit inquisitio prout moris est et ceperit homagium huiusmodi hered'.

In the 52. yeare of king Henry the third, long time before the making hereof, was there another Statute made at Marlebridge concerning this matter: In the 16. chapter whereof it is thus prouided. De hereditate autem que de dño rege tenetur in capite sic obseruand' est, vt dominus Rex primam habeat inde seisinam sicut prius inde habere consueuit, nec heres nec alius in hereditatem illam se intrudat, priusquam illam de manibus domini regis recipiet prout huiusmodi hereditas de manibus ipsius & antecessorum suorum recipi

recipi consueuerit,& hoc intelligatur de terris & feod' que ratione seruitij militaris, socagij vel seriantiæ, seu iure patronatus in manibus Domini Regis esse consueuerunt. Both these statutes declare themselues to be of none other force than as a confirmation of that, that was the Kings prerogatiue by the order of the common law, as it may appeare by these words, prout moris est, sicut prius habere consuevit, recipi consueuerit, esse consueuerunt. And therewith agreeth also Britton fol. 17. The words of the statute bee, Rex habebit primam seisinam, what prima seisina is, it is declared by the words that follow, s. capiendo omnes exitus &c. by which words may appeare, the King shall not onely seise, but also receiue the whole profits till liuerie bee sued, which suit most commonly hath beene and is, wythin the yeare and day next after the death of hys tenaunt: and therefore the King vseth to take no more than the first fruyts, that is to say, one yeares profits, if there bee not apparant default in the heyre, that hee will not sue his Liuery, in which case then the kings highnesse shall be aunswered of all the profits taken till Liuery bee sued, or at the least tendred, and after pursued with effect: yea and if it be a generall liueries, and not rightfully pursued according to the order of the Law, the King shall reseyse, and bee aunswered of all the meane profits from time of suing of the sayd Liuerie, for when the liuery is misused, it is as it had beene neuer sued. Howbeit this seisure shall not bee without a Scire facias, as I shall thereof speake more at large hereafter. But if the heyre or he that should sue Liuerie doe make a rightfull suit for the same according to the order of the Law, and as much as in him lyeth to doe to haue liuery, howbeit the King will not but will bee aduised ere hee make him Liuery and so protract the time, in this case hys Highnesse of right may not haue the profits from the time

time the partie was thus delayd, but ought to restore them vnto the party vpon his liuery, as may appeare in H.1.H. 7.fol.28. And thereupon it is to bee noted, that there bee two kind of Liueries, the one generall, the other speciall. The generall is the liuery that this statut speaketh of, the especiall may bee more properly treated of, when wee come to the thirteenth chapter of this Prerogatiue. And this generall liuerie is sometime made cum exitibus, and sometimes sine exitibus, but for the most part sine exitibus: For where it is made cum exitibus, from the time of the seisure, there it is properly no liuery, for it appeareth the king neuer seised rightfully or by any title. As for example, if the King will seise the land that is found in thoffice to bee holden of the Archbishoppe of Canterburie, or Bishoppe of Durham, or any such persons as are exempted in the first Chapter of this Prerogatiue, in thys case they shall haue an Ouster le mayne vna cum exitibus, as it appeareth in lib. 16.E.3.pl.29. The same is it, if of lands holden in Capite there bee a lease made for terme of life, the remainder ouer to estraunger, tenant for terme of life dyeth, and this matter found by office, now if the King seise, hee in the remainder shall haue an Ouster le maine vna cum exitibus: as it appeareth in H.14.H.4.fol.32. H.18.E.3.fol.21. T. 24.E.3.fol.29. Like law is it where two hold iointly of the king, and the one dyeth, and this matter found by office, and yet that notwithstanding the king seises, hee that surviues shal haue an Ouster le main vna cũ exitibus, as it appeareth 41.Ass.p.36. and in the new Natura brevium fo.249.f.257. For in all these cases where the Ouster le mayne is vna cum exitibus, the King ought not to haue seysed, and so saith Thorp T.45.E.3.fol.18. The words of the statut be further, Post mortem eorum qui de eo tenent. Upon this it is to be seene at what tyme after the Kings tenaunts

death

death this liuerie shall bee sued. If the possession of the freehold immediatly after the death of the kings tenaunt discend vnto his heyre, it is to bee sued forthwith, and if but onely a reuersion discend, then it is not to bee sued till after the death of the particuler tenaunt, as it may appeare Natura brevium fol. 258. where the heire sued not liuery til after the death of the tenant by the curtesie, tenaunt in dower, and tenant for terme of life. But learne what the Law should haue beene if the kings tenaunt had dyed seysed of a reuersion whereupon rent had beene reserued, his heyre of full age, whether hee should haue then sued liuerie forthwith, or else to haue tarried till the death of the particular tenaunt: for in 9.H.6.folio 3. Iune thinkes he should tarry, or else it might follow the king should haue double liuery, that is to say, one for the rent, another for the land: but Paston is in contrary opinion, and resembles it to a reuersion depending vpon an estate tayle with a rent reserued, howbeit at this day there is election gyuen vnto the heyre, that is to say, either to sue his liuery immediatly after the death of his auncester in the life of these particuler tenaunts, or els to tarie vntill they dye, and if hee sue his liuery in their life, hee payeth for primer seisin but the moytie of one yeares profit, and if after their death, then hee payeth the whole yeares profit: howbeit if there bee a rent reserued, and hee pursueth his liuerie in the life of the particuler tenaunt, it seemes besides the halfe yeares profit of the value of the land hee shall also pay the whole yeares profits of the rent reserued, therfore learne what common experience teacheth vs in that case. The words of the statute be, Qui de co tenent in capite. By these words hee must hold of the king in chiefe, for if hee hold not of him in chiefe, the king can haue no primer seisin. And yet you shall see in the new Natura brevium fol. 263. that of lands in the city of London holden of the king in Burgage,

the

the king had primer seisin, & the heire therof sued his liuery, but that president seemes to be against the law, for Markhã sayth in H. 7. E. 4. fo. 17. that in Neuels case it was found, that ones father dyed seysed of certaine land that hee held of the King in Burgage, and thereupon the ercheto; did seyse: which seiser by the aduise of all the Iustices was discharged by a Supersedeas awarded to the ercheto;, for the wo;ds of both the afo;esaid statutes, be very plaine therein, that is to say, that hee must hold of the King in Capite, but whether hee hold of the K. by knights seruice, o; by Socage in Capite, it maketh no matter, so that he hold in Capite, for the king in both cases shall haue p;imer seisin, although not with so large a p;erogatiue in the one case as in the other. Fo; in the first case where the tenure is knights seruice in Capite, the king shall haue the same p;erogatiue when the heir is of ful age at the death of his ancestor, as he should haue had if hee had beene within age, that is to say, P;imer seisin al well in the lands holden of others, as of himselfe, be it that the lands holden of other, be holden by knights seruice o; in Socage. But otherwise it is where the tenure is but a tenure by Socage in Capite, for there the king shall haue no p;imer seisin in lands holden of other, namely, if they be holden of other by knights seruice, as it appeareth plainly by the Statute of Magna Charta capitulo 27. and in the new Natura brevium fo. 256. no; yet any p;imer seisin of lands holden of himselfe in Socage in Capite: If the heire at the death of his auncestor be not of the age of fourteene yeares, as appeareth H. 35. H. 6. fo. 52. E. 45. E. 3. fol. 19. and also in the new Natura brevium fol. 356. & fo. 259. But in euery of these cases they to whome the body belongeth shall haue an Ouster le mayn of the lands vna cum exitibus, that is to say, the Lo;ds of whom the land is so holden by knights seruice in thotte case,

and

and the Prochein amy in the other case. But where the lãds bee holden of the King in Socage in capite, and the heire of the age of fourteene yeares at the death of his ancestor, there the king shal haue primer seisin, and the heire driuen to sue Liuery for there is no person that can make any title to the heire or his lands, but only the King, and therefore the king must haue his primer seisin, & the heir is driuen to sue his liuery by expresse words of the foresaid Statute of Marlebridge, & so it seemeth also in that case, that his highnesse shal haue primier seisin in lands holden of other, so they bee holden but in Socage, for the reason aboue remembred. Tamẽ quære. The words of the statute be farther, de omnibus terris & tenementis de quibus ipsi seisiti fuerunt in dominico suo vt de feodo. These words may bee conferred and coupled with the first Chapiter of this Statute of Prerogatiue, which hath the very selfe same words. And therefore looke in what cases noted vpon the first Chapiter the King hath his Prerogatiue by reason of wardship, In all the same cases shall his Highnesse haue Prerogatiue by reason of primer seisin, if the heire were of full age at the death of his ancestor. Wherfore to rehearse them here particularly it were but superfluous, except it be in the case onely of collusion, giuen by the statute of Marlebridge cap. 6. where the heire is within age, because it speaketh nothing of the heire that is of full age. And therefore in that case it seemes the King cannot haue like benefit of primer seisin, as he hath of wardship, when the heire is within age. Howbeit there is no bookes in that point left at large, which is 9. 17. E. 3. f. 63. 9. 7. E. 3. Reliefe 12. & Collusion 29. P. 31. E. 3. and there the case was: The tenant enfeoffed his sonne and heyre and dyeth before the feoffee gaue notice thereof to the Lord. Ideo quære. The words of the Statute be farther, Cuiuscunque etatis heredes ipsorum fuerint. To these words also shall

shall the first Chapter of this statute haue relation: for they plainely declare, that if the heire were within age, at the death of his auncestor, the king shall haue primer seisin, and the heire driuen to sue his liuerie, notwithstanding also the king hath had the wardship of him. For the words be generally spoken, and may be extended aswell where hee was within age at the death of his auncestor, as where he was of full age. And so hath it beene euer vsed, sauing that where hee hath beene in ward hee payeth but one halfe yeares profit for primer seisin, & in the other case hee payeth the whole. The words of the statute be farther, Capiendo omnes exitus eorundem terrarum & tenementorum donec facta fuerit inquisitio prout moris est & ceperit homagium hered'. By these words it may appeare that the King after the death of his tenant, and before any office found, might seise the lands, and take the profits: which thing surely is true, as plainely is proued by the Writ of Diem clausit extremum, which hath these words: Cape in manum nostram omnia terras & tenementa &c. donec aliud inde preceperimus & per sacrm proborum hominum diligenter inquiras &c. So the seiser goeth before the inquisition, howbeit since the statute made at Lincolne Anno 29. E. 1. called Statutum de Escaetoribus it is not vsed to seise til office be found, and then the king to be aunswered of al the profits since his tenants decease, which commeth all to one effect. And yet that statute doth not restraine the seiser, but that therchea-tor may seise at this day without office. By the aforesaid statute of Marlebridge cap. 16. it is expounded and plainely set forth of what lands and fees the King shall haue primer seisin, for these bee the words, Et hoc intelligatur de terris & feodis quæ ratione seruitij militaris, socagij, vel serianciæ, siue jure patronatus in manibus domini Regis esse consueuerunt. By these words it may appeare, that hee that is

ward

ward because of wardship shal not sue liuerie, or where one holdeth of the Kings ward by Knights seruice, or in socage, and dyeth, his heire of full age the King shall haue primer seisin of the lands, that are so holden of his ward, and the said second heire driuen to doe his homage or fealtie, as the case shall require, to the King, and also to pay his reliefe vnto him, and to sue Liuery of the said lands as it appeareth he did in the new Natura brevium fol. 61. & 62. For it is within the compasse of these words, Quæ ratione seruitij militaris. So is it if the King haue a Bishops temporalties in his hands during the time that the See is vacant, and one that holdeth of that temporalties by Knights seruice, or in Socage, dyeth, his heire within age, in this case, after that the king hath had the wardship, the heire at his full age shall pay primer seisin, and sue his liuery. And so shall he do if hee bee of full age at the time of the death of his auncestor, for the words of the Statute bee, De feodis quæ iure patronatus in manibus domini Regis esse consueuer, and therewith agreeth the new Natura brevium fol. 254. But learne if the kings tenant in chiefe dye, his heire of full age, and one that holdeth of the heire before he hath sued his liuerie dyeth, his heire also being of full age, whether in this case the King shall haue primer seisin of the lands of the second heire or no, as hee should haue had if the heire of his tenant had beene within age, and in the Kings ward at the time when this second heire did fall, and it seemeth to mee hee shall, for the reason made afore. Then last of all, whether this Prerogatiue extend to any statute made since the time of King Ed. 2. it seemes it doth, and that for the reason noted in the first Chap. fo. 9. as the feoffees of Cestuy que vse before the statute made in the 27. yere of K. H. 8. vsed to sue

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an Ouster le main sine exitibus, which was in nature of a Liuery for the heire of cestuy que vse which had bene in ward. Item, for asmuch as there be exceptions in the first Chapter, and none in this, whether they also bee comprised within this Chapter or not: and mee seemes they be, because these two Chapters must concurre together and agree in euery thing. And if the heire bee within age at the death of his auncestor, the Archbishop of Canterburie shall haue an Ouster le maine vna cum exitibus, so that the heire shall not sue liuerie of that, and then by the same reason if hee bee of full age at time of the death of his auncester, for the liuery in the one case and the other is giuen by this Chapter as me seemeth, Tamen quære.

¶ Le Roy auera lendowment & mariage de ses veufs & femes. Cap.4.

ITem assignabit viduis post mortem virorum suorum, qui de eo tenuerint in capite dotem suam quæ eas contingit &c. licet heredes fuerint plenæ etatis si vidue ille voluerint, & viduæ illæ ante assignationem dotis suæ prædictæ siue heredes plenæ etatis fuerint siue infra etatem iurabunt quod se non maritabunt sine licentia regis. Et si se maritauerint sine licentia regis, tunc rex capiet in manum suam nomine districtionis omnes terras & tenementa quæ de eo tenentur in dotem donec satisfecerint ad voluntatem suam, ita quod ipsa mulier nihil capiet de exitu &c. quia per huiusmodi districtiones huiusmodi mulieres seu viri eorum finem faciant regi ad voluntatem suam, & illa voluntas tempore regis H. patris regis E. estimari consueuit ad valenc. prædictæ dotis per vnum annũ ad minus nisi vberiorem gratiam habuerint. Mulieres quæ de rege tenent in capite aliquam hereditat' iurabunt similiter cuiuscunque fuerint etatis quod se non maritabunt

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ſine licentia Regis, & ſi fecerint, terræ & tenementa ipſarum eodem modo capiantur in manum dñi Regis, quouſque ſatisfecerint ad voluntatem Regis.

This ſtatute likewiſe doth but confirme the cõmon Law before, as it appeareth by the ſtatute of *Magna charta cap.* 7. which was firſt made in the time of king H. the 3. which is, Quòd nulla vidua diſtringatur ad ſe maritandum, ita tamen quod ſecuritatẽ faciet, quod ſe non maritabit ſine aſſẽſu noſtr̃, ſi de nobis tenuerit. And alſo in the 24. H. 3. *Prerogatiue* 27. it is ſaid, that when the kings tenant dyeth, & his wife endowed, ſhe cannot marry without the kings licence, and if ſhe doe, ſhee and her huſband ſhall make fine. The expoſition. It ſhould appeare by the words, that the Wiues of all them that hold in Capite, cannot haue dower at any mans hands, but onely the kings, if his grace will, for in that his grace hath a Prerogatiue aboue all common perſons, aſwell for that ſhee ſhall thereby hold of his Highneſſe in chiefe, as for that ſhe ſhal not marry without licence: for ſo ſhee might be married vnto the kings enemie, and thereby the ſtrength of the Crowne infeebled. Therefore it is prouided, that his Highneſſe may aſſigne the Dower, whether the heire be of full age, or within age, to the intent, that ſhee before the receiuing therof ſhall take a corporall oath, not to marry without the kings licence. The maner of the aſſignemẽt whether the heire be of full age, or within age, is verie well ſet forth in the new *Natura brevium fo.* 263. in the writ *de Dote aſſignanda.* Howbeit, for that ſome things are there noted, which ſeeme to repugne with our Booke cases, I purpoſe to conferre the one with the other, and ſee how they can agree. In the ſaid *Natura brevium* it appeareth, that notwithſtanding the king had cõmitted the land ouer to an other, yet the woman ſued in the Chãcery to the king for her Dower, & not to the Cõmittee, & in our bookes you ſhal ſee many writs brought againſt the Cõmittee, yea, & in ſome of them, that ſhe recouered her dower, & the king not made party to the ſame, as the

booke is in H.4.H.7.fo.1. which is more at large, *Aid de roy* 33. where ỹ writ of *Dower* was brought against ỹ kings cõmittee, who pleaded in barre without praying in aide of the king, & the barre was found against him, & notwithstanding that it did appear vnto the Justices, ỹ the K. might be touched therby, yet would they not surcease, but awarded that the demandant should recouer, & toke for their cause the Statute of *Bigamis*, An 4.E 1.*cap.*3. which saith in this manner: De doubus Mulierum vbi aliqui Custodes hæreditatis maritorũ suorũ custodias habẽt ex dono vel cõcessione Regis, siue custodes rem petitã teneant, siue hæredes dictorũ tentorũ vocentur ad warrantũ, si excepiant, q̃ sine Rege respondere non possunt, non ideo Supsedeatur, quin in loqla ꝓdicta ꝓut iustũ fuerit ꝓcedatur. This *Natura brevium*, & this booke of 4.H.7. seem not to agree. For where takes shee any oath, where shee recouers by a writ of *Dower* in the cõmon place? which oath shee must needs haue taken, if shee had sued in the Chancery, or how may ỹ cõmittee endow her, when percase he will endow her of more than shee ought to haue, or endow her where shee is not dowable by the law? whereunto one may answer in this wise, that his wrongfull endowment shall not conclude the king, but that his grace may reform ỹ thing when he will, & since he hath cõmitted all his interest ouer, *Durante minore ætate*, his grace may permit the endowmẽt made by the cõmittee, if it be rightfully made to stand: & specially because of the Statut of *Bigamis*, which allowes it to be so. And notwithstanding shee take no oath, yet can shee not marry wout the kings licence, for this endowmẽt by the cõmittee is ỹ kings endowmẽt vpon the matter, for that that he holdeth in right of the king, which continues still Gardein, notwithstanding any such cõmission or grant of ỹ wardship. Therfore it shold seem, that after the ward cõmitted ouer (as is aforesaid) it is at the election of the woman, whether she will sue to the king in the Chancery, or at the cõmon Law against the cõmittee. But if the king do but commit the ward ouer, *Durante bene*

placito,

placita, otherwise it is, for there she must sue only to ỹ king, as appeareth in *Dower* 169. 8. E. 2. And note well, that this statut of *Bigamis* before recited will also, that if ỹ heire of the husbãd be vouched to warrãty, being in the custody of those cõmittees, that the Iustices shall not forceale, no more than when ỹ writ of dower is brought against the cõmittee. Contrary to this branch of the said stat. are there diuers bookes, as *M.* 18. E. 3. *f.* 38. *H.* 8. E. 3. 15. & *Aid de Roy* 64. *H.* 18. E. 3. where ỹ said cõmittee came in, ỹ heir being vouched in their ward, & shewed how they held of the K. leas, & prayed in aid of the king, & had it whereat I do not a little maruel, because of this stat. of *Bigamis*, which was neuer spoken of, ne yet remembred in these bookes, their iudgements as it should seem being directly against this statut. Howbeit the maner of the lease doth not there certeinly appear, ỹ is to say, whether the wardship were graũted *Durante bene placito*, or *Durante minore ætate*, for that would make a difference, as I haue said before. Also the booke is 22. 79. E. 3. fo. 8. where in a writ of *Dower* brought against the cõmittee of the committee, there was aid granted of the king: but that seemes to be out of ỹ compasse of ỹ stat. of *Bigamis*, which speakes only of the that haue it of the K. grant, & so hath not the second cõmittee: therfore learn what the law will in these cases. But if the wardship be cõmitted to the wife wout any exception or forprise of her dower, she by ỹ is cõcluded to claim any dower during the said wardship, as it may appeare in 39. H. 4. f. 7. in ỹ said *Nat. bre. fo.* 264. D. It is also said, that where liuery is made to the heir before the womã sue for her dother in the Chãcery, & in ỹ said liuery ther is no sauing made for her dower, ỹ then she must pursue her writ of dower against ỹ heire: & ỹ reaso that is there made is, because the K. hath made liuery generally wout any reseruation of *Dower* to be alligned by his Highnesse: Whereunto I answer, that whē liuerie is sued before allignment of dower, there is most cõmonly in the writs of Liuery a sauing made for her dower, if it so be that she were

found the kings tenants wife in the office, and shē being so found, if the heire sue a generall liuery, leauing out these wordes, Salua dote, or retenta dote &c. it is a good cause for the king to reuerse the whole, for the liuery is misused in that case, for that I learned of Iust. *Stilman*, which noted it so in 11. of H. 8. but if shē be not found wife in ỳ office, the heire may sue his liuery without any such sauing, to say, that the king by making such a liuery should waiue the aduantage of his prerogatiue in the dower, that seemes not to be true, vnlesse the said waiuer were by expresse wordes, wherefore it seemes the heire in that case after liuery is not boūd to yeld vnto her dower, but her only remedy is to sue for the same to the king, & ỳ must be first vpō an office (as I think) finding that shē was his tenants wife, *Ideo Quære*, & learne whether shē may haue dower in any case, either in the Chancery, or by writ of *Dower* at the cōmon Law against the cōmittee or the heir, vnlesse shē bē found wife first by office as is afore-said, except it be in cases where the king wil refuse this prerogatiue. And note ỳ like as the king hath a prerogatiue by this statute to yeld dower to ỳ wife of his tenāt, so hath his highnesse a prerogatiue by the cōmon Law, to withhold dower from the wife of his tenāt, which no cōmon person hath. As put case in a writ of *Dower* ỳ heir be vouched in the kings ward, & the tenant sheweth for his lyne the feoffement with warranty of the husband which is father to him that is vouched, yet that notwithstanding shē shall recouer her dower against the tenant, & not against the heire, because that else the king should lose the wardship of the lands, where ỳ woman may (without her losse) as well recouer her demaund against the tenant, as shē should against the king, & yet if the king were a common person in that case, he should lose the wardship of so much as shē demaundeth. And this booke is H. 36. E. 3. fo. 18. where it is said, that the kings Committee of the wardship shall not haue the prerogatiue, & therewith agrees H. 8. E. 3. fo. 15. And note, that like as the king hath

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prerogatiue againſt the wife that bringeth the writ of *Dower*, ſo ſhall ſhee haue prerogatiue againſt the tenaunt in the ſaid writ of *Dower*: for notwithſtanding that the tenant in the ſelfe ſame caſe haue iudgement to recouer ouer in value againſt the heir which is in the kings ward, yet he ſhal haue no execution of that recouery tyll the land bee ſued out of the kings hands. Howbeit M.27.E.3.fo.87.is contrary to the ſaid booke of 26.E.3. *ideo Quere.* And learne and enquire, wether a woman being thus endowed at the hands of the feffee of her huſband of ſuch lands as he died not ſeiſed of, & whereof the king at that time can haue no wardſhip, whether ſhee may marry or not, without the kings licence: and it ſeemes ſhee cannot, for any words compriſed within this ſtatute. And it appeareth in 26.li.All.p.57.that where a woman was endowed by gardein in chiualry, and afterwards the garden cõmitted treaſon, whereby the ſeignorie was forfeit to the king, that after this forfeiture ſhee ſhould hold of the king, and not of the heir which was in the reuerſion, in which caſe then ſhee cannot marrie without lycence, as me thinketh. Then further it is to be ſeene to what lands the ſtatute doth extend vnto, and to what not. It extends to lands holden in *Capite*, whereof any woman claymeth dower, as may appeare by the words of the ſame ſtatute, and not to any other lands: for if the king haue in his cuſtody a Biſhops temporalties during the time the See is vacant, & one that holdeth of thoſe temporalities by knights ſeruice dieth, his heire being within age whereby the king hath the wardſhip of his heir, and endoweth his wife in this caſe ſhee ſhal make no oath, but may marry without licence. Like law is it where ſhee is endowed of lands that are holden of him that is the kings highneſſe warde by reaſon of a tenure in capite, for in both theſe caſes the land whereof dower is demaunded, are not holden of the king in chiefe, and this doth appeare in the new *Naturabrevium fo.*264.*a.* and yet in both thoſe caſes ſhee is endowed in the chancery, but

what is that to the purpose? for so shall the heire in those cases sue Liuerie of those lands, & yet they be neuer the more for ỹ holden in chief, but only vsed for a solemnity, because they were in the kings hands once by office, which is matter of record. The words of the statute be further: *Et si se maritauerint sine licentia Regis, tunc Rex capiet in manum suam nomine districtionis omnes terras & tenementa quæ de eo tenent in dotem &c.* These words be knit in a copulatiue to the former words contained within this chapter, that is to say, where shée hath demanded dower, & is sworne not to marry, but if shée will neuer demaund dower of the lands holden in capite, shée may marry where shée will: for the words of the statute be: *Quòd assignabit viduis dotem si viduæ illa voluerint:* and so thinks Iustice *Fitzherbert* in his *Natura brevium f.* 175. Howbeit by the booke in 40. li. all. 36. it appereth that the wife neuer demaunded dower, & yet had allowance of it, & did marry also wout licence, & yet paied no fine, and therefore the case was: The kings tenant in taile in chief made a feoffement by licence, & toke estate again to him and to his wife, & died, the wife takes an other husband & dies, after whose death the auncient estate taile being found by office, the licence was holden voide, because the king was deceiued therein, & the second baron driuen to answer for the meane profits of two parts of the land, but not for the third part, because shée was endowable, *quod nota.* A woman tenant in dower of no mans assignment, and some there thought shée should forfeit her dower, because shée was party to the deceit. Howbeit this case séemeth not to be properly within the compasse of this statute. Also *Fitzherbert* in the said *Natura brevium fo.* 174. thinketh, that where the king hath vsed to graunt to other the marriage of his widowes, that a cõposition with the graunts made for the same (whether it be made by the wife or the husband) is as good as if it were made with the king, yet cannot the grantée in such case compell her to marry, for that should be contrary to the

statute

ſtatute of *Magna charta ca.7.* which will that ſhée ſhal not be conſtrained to marry by diſtreſſe, but if ſhée will ſhée may liue ſole. Howbeit at this day by the ſtatute of 32.H.8..46. the compoſition is giuen to the maiſter of the kings wards and liueries with ỹ. of ỹ counſel of the ſaid court. And likewiſe authority is giuen to them wher the kings widowes marry them ſelues without licence to tare a reaſonable fine by their diſcretions according to the ſtatute of *Prærog. Regis*, which ſtatute plainly ſetteth forth what hath bene vſed to be done in ſuch caſes, ỹ is to ſay, the value of her dower by one yere, & therewith agrées the new *Natura breviũ fo.174.* And for that fine the King ſhall ſeaſe al the lands and tenements ſo holden in dower, as it apperes by the letter of the ſtatute. Howbeit the *Regiſter* giueth that ỹ king may ſeaſe aſwell the land of the huſband as of ỹ wife, becauſe the mariage is a wrong don to the King, but the ſtatute is cõtrary to that, and therefore *Fitzherbert* in the ſaid *Natura brevium fo.174.* thinkes it to be no law: For as well might ỹ lands that the woman hath of her inheritaunce bée then ſeiſed, wherefore no other land ought to be ſeiſed, than that ſhée holdeth in dower, as it appeares in the ſaid *Natura brevium fo.265.c.* And learne whether the womã obtaining dower at the hands of the committée, or of the heir of lands holden in capite, without making any othe, may marry or not, wout licence, & as me ſeemeth ſhée cannot, for as ſoone as ſhée is endowed of thoſe lands, ſhée is the kings tenant, & not tenant to the heir which is in the reuerſiõ: for if a treſpas be don vpon the land, ſhée ſhall haue a writ out of ỹ chancery, ỹ one ſuch hath entred vpõ the kings poſſeſſion, & the auowry to be made by the king reſteth only vpon her, & ſo is the opinion of *Wood* in P.1.H.7.f.17. And yet the reuerſion is in the heire only, for if ſhée do waſt, the heire ſhall puniſh her for it, and not the King. Then further let vs ſée of what force this dower is, when it is made in the chancery, & how ſhée ſhalbe admeſured in the ſame, if it be too great, for if it

be to little, ther is no remedy for her but to stand to her own harmes if shee in the chancery once did accept it, not forcing whether shee were then within age, or of ful age, as it may appere in T.18.E.3.f.29. The dowmēt in ỳ chauncery is of this force, ỳ whether it be by right or by wrong, it cannot be defeated by way of plee wout a sute made in the chācery for ỳ defeting thereof, as it appereth in M.17.E.3.f.71. & *Dower* 128. M.31.E.3. And therefore in a very strōg case one doth trauerse the office which is in the chācery by reason the land is holden of him by knights seruice, & not of the king, & hath an *Ouster le main vnà cū exitibus*: yet if shee were endowed before in the chācery vpon the office, her dower remaineth vndefeated notwithstanding this trauerse & *ouster le maine*, vntill an other sute be made in the chancery for the defeting of the same. Howbeit in this case if the dower be too much, the lord that tendeth ỳ trauerse may haue a writ of *Admesurement*, at the cōmon Law, & so cause it to be admesured wout suing to ỳ king for ỳ same. For it is no losse to his highnesse though shee be admesured, seeing the land is not holden of him, as it appeareth *Admesurement* 4.T.7.R.2. & there it is agreed ỳ the heir shal haue a writ of *Admesurement* of assignment of dower made by his auncestor, *quere tamen*. But the abatour shall not haue a writ of *Admesurement*, nor *Garden en fait* of assignement made by *garden en droit*, nor if the heire were of ful age at the death of his ancestor, & died, his heire within age, the garden of his heire shall not haue a writ of *Admesurement*. But take the case to be, that a woman is endowed in the chācery, the rest of the land ther remaining stil in the kings hands, if it be surmised by the heir or any other for ỳ king, ỳ the land assigned to ỳ wife, is not extended to the very value, but ỳ it is more in value than it is extended for, now vpon this surmise there shalbe a new extent made which being returned into the chancery, a *Scire facias* shall be awarded against the woman, & if shee be warned, & come not, or appeare & say nothing, shee shalbe newly endowed,

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as it is said in *Natura brevium fo. 265. b.* Then let vs see farther, at what time the woman may aske her dower in the chancery, and when shee is endowed & loses her dower vpon a recouery had against her by an *eigne title*, how shee shalbe recompenced. If the husband haue land in diuers counties whereby after his death there be awarded seuerall writs of *Diem clausit extremum* into euery of those counties, shee shall not be endowed, vntill such time as al the said writs be returned againe into the chancery, as it may appere in *Liuery* 39. H. 17. E. 3. And note that when shee is endowed in the Chancery, & afterwards loses by a recouery vpon an *Eigne title*, then shee hath none other remedy but to cause the record of the same recouery to be remoued into the chancery, & vpon the first record, whereby it appeared shee had dower, & this other record of the recouery, shee shall haue a *Scire facias* reciting both the records against the tenant of ỹ two partes to reseise ỹ said ỹ. parts into the kings hands, & to be newly endowed of the same, but not to recouer any damages, notwithstanding damages were recouered against her, as appeareth 43. li. ass. p. 32. Now to the last branch of this statute, which is, that women ỹ hold of the king in chiefe any inheritance, of what age so euer they bee, shall like wise swere not to marry &c. By the order of the common Law before the making of this statute all women ỹ were within age, & in ward, should when they came of full age, be married by their Lords, euery one of them w̄ their portions, and if they were of full age at the death of their ancestors, yet should they neuertheless be in the lords képing vntill they were married by ỹ aduise & dispositiō of their Lords. For as *Glanuil* in his 7. booke ca. 12. that he wrot in ỹ time of king H. 2. saith: *Sine dominorum dispositione vel assensu, nulla mulier hæres terra maritari potest de iure vel ex consuetudine regni:* and therfore saith he, if a man haue issue, one or mo daughters which be his heirs apparant, and marieth any of them without ỹ assent of his Lord, ỹ he thereby forfeits his inheritance by the

Law

Law and custome of the realme, so that he shall neuer recouer it againe but only through his lords mercy, and that for this cause: For whē the husband of such a woman shall doe his homage for the tenements so holden by knights seruice, it is requisite to haue the lords will & assent, lest he be compelled to receiue homage of his mortall enemie, or some other vnable personage, neuertheless if the tenaunt sue to his lord for licence to marry his daughter, the lord is bound to consent, or els to shew cause why shē should not, & if he will not, the woman may marry where shē listes, without his assent. And the said *Glanuill* further saith, that tenaunt in dower cannot in like wise marrie without the assent of him that is her warrant, that is to say, the heire: And if shē do, shē shall lose her dower, & yet there the husband shall do no homage: but what then? he shall do fealty, & for that cause also shē shal haue licence. And further saith, if shē hold of diuers lords, it is sufficiēt for her to haue the assent of the chiefe lord. And he saith, ỹ women being in ward, *Si de corporibus suis foris fecerint*: Which words as I vnderstand them, be, if they commit fornication, & that be proued, then they that offend shall be disherited, so that her portion then goes to the other sisters ỹ haue not in the like offended. And if they all offend, then the lord shall haue the inheritance by way of eschete. Howbeit, saieth he, where they be once married by the lords assent, & after become widowes, they shalbe no more in ward, but yet if they marrie again, they must haue his assent for ỹ reason before made. But then after they haue bene once married, they shall not forfeit their inheritance for their incōtinency, so that it apperes plainly here by *Glanuill*, ỹ this whole statute of Pherog. should be but a confirmation of the common Law. And ỹ the law was so as *Glanuill* toke it, it may partly appeare by the said statut of *Magna charta ca.* 7. For the words are not only, *Quod vidua securitatem faciet quod si non maritabit sine assensu nostro, si de nobis tenuerit*, but are also,

vel

vel sine assensu domini sui, si de alio tenuerit. And *Bracton Lib.* 1. agrées alſo with *Glanuill.* Howbeit, he ſaith, where a woman in the life of her auncеſtors marryes without the aſſent of the lord, or where the widdow marries without the aſſent of her warrant, that the inheritaunce or the dower ſhall not now be forfeited, although in olde time it was. And farther ſayth, that the heire in ſcrage being a woman ſhalbe married by the lord, like as ſhée ſhould if ſhée were heire of lands holden by knights ſeruice. And farther ſaith that the heir male ſhalbe maried by the lord more than once that is to ſay, as often as he ſhall become vnmaried in the time ẏ he is vnder the age of 21. yeares. But now by the ſtatut of W. 1. ca. 22. the lords are abridged of their power in theſe mariages of the heires females, for if they now be win the age of 14. yeares at the death of their anceſtor, and ẏ lord doth not marry them before they come to 16. yeares, then ſhall they recouer their heritage without any thinge giuen either for the ward or for the marriage. And if they malitiouſly, or through euill counſell refuſe to marrie where their lords do appoint them without diſparagement, then ſhall their lord hold their land vntill they come to the age of 21. yeares & longer, vntill they haue taken the value of the marriage. Out of this ſtatute (if it be wel conſidered) a man may gather that the cõmon Law was no leſſe than is here recited. And this ſtatut was made about the third yeare of king E. 1. a little before that *Britton* beganne to write hys booke: for *Britton fo.* 169. ſaies, that ẏ marriages ſhould be offered to the heires females before they accõpliſh the age of 14. yeares, and if not, the lord ſhall loſe his right in the ſaid mariages. I ſuppoſe that the printer miſtooke the number of the yeares, & ſhould haue printed fifténe, where is but fourténe, & therefore it is good to ſee other copies, for this matter. And *Britton* alſo ſaith, that if he or ſhee haue béene once married by the Lord, or in the life of their father, or

once

once agreed with their Lord for their Marriage, they shall neuer againe be maried by him, but may marry themselues where they list, so that they hold nothing of the king. And *fol.* 168. he saith, that the king shall haue the Marriage of all the heires females, where they hold of the king, of what age soeuer they be, as often as they shall be to marrie, so that they cannot marry without the kings licence. Thus is the last clause of this Chapter expressly proued by *Britton*, that the Common Law did still remaine as it was for the Mariage of the heires females in the kings case, and not altered or abridged by the said statute of West. the 1. and therefore was the statute in the 39. yeare of king Henry the 6. the last chapter made in this wise: *Item de auisamento, assensu, & authoritate prædicti is ordinatum est & stabilitum, quod Mulieres existentes quatuordecim annorũ tempore mortis antecessorum suorum, absque quæstione seu difficultate habeant liberationem terrarum & tenementorum suorum sibi descendentium, quia sic Lex istius terræ vult quod ipsa haberent.* Howbeit, this Statute prouides not where they be within the age of fourteene yeares at the death of their auncestor, *Ideo Quære.* For as our late bookes go since *Brittons* time, the king hath lost his Prerogatiue, vpon what occasion, I know not, but I would gladly learne, for *Fortescue* sayes H. 35. H. 6. fol. 52. that when the heire Female sues her Liuerie, shee take no oath that shee shall not marry, as the kings widdow doth, and therefore, saith he, it should seeme shee should make no fine, if shee marry without licence. Howbeit *Littleton* saies, that if the heire female be of the age of 15. yeares at the death of her auncestor, and marrie her selfe without licence, that shee shall make a Fine, for it amounteth to an alienation: For after issue had, the husband is become the kings tenant, and he only shall doe homage in his owne name. And yet afterwards H. 15. E. 4. fol. 13. the same *Littleton* sayes, that the latter clause of the same statute is void, for the

daughter

daughter which is in ward, marrying her selfe to an other without licence, shall not make fine to the king. Thus by the argument of the said booke of 35.H.6. it appeares, that they take the king to be bound by the said statute of Westm. the 1. and make him no better than a cõmon person, whereat I haue no little maruaile, sithe he is not named in the said Statute. For in the said booke, H.35.H.6. *Gardpla.* 71. it is agreed by the Court, that if the king after the age of 14. yeares, and before 16. do marry the heire female, shee shall haue liuerie forthwith vpon the marriage, although shee then be not of the age of 16. yeares, because that shee was of full age before, as it is there said: that is to say, as soone as shee was 14. And the 2. yeares ouer, is but onely giuen for the marriage, which when it is once had, and the 14. yeares past, the King or Lord leese their interest. And so it was graunted, that if shee were married before the age of 14. and after her husband dyes before the said age, when shee comes to the said age of 14. shee shal haue Liuerie. And there it was also said, that these two yeares were giuen to the Lord to tender her Marriage in, for the tender before was void, because it was within the age of 14. yeares. But note, that if the heire female, being vnder the age of 14. yeares, falleth into the Kings hands as ward, because of certaine lands that her father held of the king in chiefe, and by reason thereof the king hath also the lands in ward, which are holden of other in Socage, in this case when shee comes to the age of 14. yeares, & is vnmarried, shee shall not haue Liuery of these lands holden in Socage, & yet by reason of them the king hath not the Marriage of her. But what then? shee can not sue her Liuerie by parcels, and that is the cause that the whole land shall tarry in the kings hands, till a whole Liuerie may be sued of them all. And this appeares in the new *Natura brevium fol.* 256. And last of all note, that this latter clause extends not to Women that claime by purchase, but onely by discent. And therefore it appeares, *Liue-*

rie 31.

rie 31. *H.* 15. *E.* 3. that where it was found vpon the *Diem clauſit*, that the wife was iointly infeoffed with her husband, ſhee had an *Ouſter le maine*, without finding any ſuertie, of her Marriage. And note alſo, that by the Common Law, if one will marry the kings Niefe, that is to ſay, his bond woman without licence, he ſhall pay a fine vnto the King, as appeares in 33. E. 3. Lib. Aſſ. *Trauers* 36.

¶ Le Roy auera Homage de cheſcun Parcener, & ſur particion cheſcun de eux auera part del terre tenus del Roy.
Cap. 5.

ET ſi vna hæreditas quæ de Rege tenetur in Capite, deſcendat pluribus participibus, tunc omnes illi hæredes facient Homagiũ Regi, & illa hæreditas quæ de Rege tenetur, participabitur inter hæredes illos, ita quod quilibet eorum extunc partem ſuam tenebit de Rege.

This Statute is ſomewhat declared by a Statute made long time before, that is to ſay, in the 14. yeare of king Henry the third, called *Statutum Hiberniæ de Coheredibus*, which for the better declaration of this Prerogatiue, I haue alſo heere noted.

HENRICVS Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, & Normanniæ, Comes Andigauiæ, dilecto & fideli ſuo Gerardo, filio Mauriſci Iuſtitiario Hiberniæ ſalutem. Cum Milites de partibus Hiberniæ nup ad nos accedentes nobis oſtenderunt, quòd cum hæreditas deuoluta ſit inter Sorores in terra noſtra Hiberniæ, Iuſtitiarij noſtri in eiſdem partibus itinerantes incerti ſunt, vtrum poſtnatę ſorores tenere debeant de primogenita ſorore, & ei facere Homagium, an non. Et quia dicti Milites petierunt Certiorati qualiter in Regno noſtro Angliæ, in caſu conſimili hactenus vſitatum fuit, ſic ad inſtantiam eorũdem vobis ſignificamus, quod in Regno noſtro Angliæ talis eſt Lex & conſue-

tudo

tudo in hoc caſu: Quòd ſi quis de nobis tenuerit in capite, & habuerit filias hæredes ipſo patre defuncto, anteceſſores nri habuerunt, & nos ſemper habuimus, & cepim⁹ Homagium de omnibus hmoi filiabus, & ſingulæ earum tenerent de nobis in Capite in hoc caſu. Et ſi infra ętatem fuerint, nos habebimus cuſtodiam earum, & Maritagium ſingularum. Si autem de alio domino tenuerint, & ipſæ ſorores infra ætatem fuerint, earū dominus habeat cuſtodiam & maritagiū ſingularum, & primogenita tantùm faciet Homagium dño ꝓ ſe & omnib⁹ ſororibus ſuis, & alię ſorores cùm ad ætatem pueuenerint, facient ſeruitia dñis feodi ꝓ manus primogenitę. Nec poteſt primogenita ea ratione vel occaſione, á poſtnatis ſoronb⁹ homagiū vel cuſtodiam, vel aliquam aliam ſubiectionem exigere vel habere. Quia cùm omnes ſorores ſint quaſi vnus hæres de vna hæreditate, ſi primogenita poſſet hēre homagiū aliarū ſororum, vel cuſtodiam petere, tunc eſſet illa hęreditas diuiſa, ita quòd primogenita ſoror eſſet ſimul & ſemel de vna hęreditate domina & hæres. Hęres autem ſuæ patris, & dña ſororū ſuarū, qđ quidem in iſto caſu fieri non poſsit, cùm ipſa primogenita nihil poſſet petere plus quàm aliæ ſorores, niſi capitale meſuagiū ratione eineciæ. Prætereà, ſi primogenita hmoi Homagiùm à poſtnatis ſororibus ſuis acciperet, eſſet quaſi domina earū, & habere poſſet cuſtodiam earū, & filiorū ſuorum & hoc eſſet quaſi committere Agnum Lupo ad deuorandū. Et ideo vobis mandamus, qđ ꝑdictas conſuetudines quas in Regno nro Anglię habem⁹ in hoc caſu, (vt ꝑdictū eſt) in terra noſtr Hiberń ꝓclamari, ac firmiter teneri faćias & obſeruari. In cuius rei &c. Teſte me ipſo apud Weſtmonaſteriū nono die Febr'. Anno regni nri decimo quarto.

Before the making of this Statute, called *Statutū Hiberniæ*, it appeareth by *Glanuill, Lib. 7. ca. 3.* which wrote in the time of king Henry the 2. that the husband of the eldest daughter, should do Homage vnto the Lord for the whole inheritance, & that the other daughters, or their husbands,

should

should do their seruice for their tenements vnto the chiefe Lord by the hands of her eldest Sister, or her husband, & yet they for the same should not be bound to do any homage or fealty to the eldest Sister, or her husband, during their liues, ne yet the heires that come of them in the first degree, or second degree. But the heires in the third degree by the Law of the land were bound to do homage, & to pay Reliefe for their tenements vnto the heire of the eldest daughter, *quod nota.* And the reason of it after the minde of *Bracton Lib. 1. de Hom' capiend'*, which agreeth with *Glanuill* is this, that when issue discendeth of them to the third or fourth degree, it is not like that issue should faile of their bodies, & then may the heires of the eldest daughter take Homage verie well: for it is vnlikely that the eldest daughter, or her heires should then haue the same by discent, for these be his wordes: Quia cum sint hæredes tres de hærede in hæredem, extunc vix poterint deficere, & ideo tunc sequitur homagium absque damno & periculo donatoris. For if there were likely whood of the discent, in this cas the taking of Homage should be rather hurtfull, than beneficiall: For by the ancient Lawes, if one had infeoffed an other, to hold of him, & had taken his homage, he could neuer be his heire afterwards, but the next vnder the feoffor & his heirs of the kinred should rather haue it. As put case, before the statut of *Quia emptores*, the eldest sonne had infeoffed ẏ middlemost to hold of him, & had taken his homage, the middlemost dieth without issue, the yongest should haue had ẏ land, & not the eldest, because of ẏ homage that he toke: howbeit if there were no ẏ̄ger sonne, or any other heir, then the feoffor might claime ẏ land again by escheat, & not otherwise: for as long as there were any, the feoffor or his heires of whom the lands were so holden, might not haue it. And that *Bracton* sheweth also in his first booke, in the title *de Maritagijs reuersis ad donatorē ꝓ defectu hæredis.* For he hath this text or saying there, *Quod homagiū expellit dominicum, & retinebit*

nebit

tinebit seruicium, & quod non potest quis esse dominus & heres: so that you may now perceiue that this statute of Ireland agréeth with Glanuil, sauing that Glanuil dilateth or declares the common law further than this statute doth.

Also Bracton lib. 1. saith further in his title of Homage, that if the eldest daughter in this case will preuent the time and take homage before the rædeth, thee by ý læseth the benefit of the discent: and saith ý the reason why the seruice ought to be done by the eldest for them all, is, because the lord shall not be driuen to take his seruice by parcel mele: & further saith, that although the eldest may not haue homage of her sisters forthwith, but must tarry a time, yet shall they out of hand doe fealtie vnto her, and all the other seruices ý are to be done, & the eldest shall do them ouer, which is contrary to Glanuil, for hee saith the other sisters shall doe neither homage nor fealtie. Howbeit Britton f. 157. agréeth with Bracton, and there setteth forth the maner of the fealtie by ý yõger sisters to be done to ý elder, & saith, that it is at ý election of the lord, whether he will take homage and the other seruices by the hands of the eldest only for them all, or else of euerie sister seuerally for her seruice: for if hee might not so doe, the Lord in processe of time might haply lése the wardship of the heires of the other sisters, because of the words in the Writ of ward, which are, that the auncestors dyed in his homage, and that would be hard to try whē the homage was euer done vnto him only by the eldest sister. And Bracton in his said title of homage saith, *Cum qualibet soror de facto acapitauerit dn'o capitali, hoc reuocari non poterit a primogeñ' vel eius marito, sed semp q̄ factum est tenebit, quia capitalis dn's q̄ēs oblat' ē non recusabit, sed sine tenuerint de dn'o Rege sine de alio, cum homagium factum fuerit sine ante tertium hered' sine post statim sequentur releuium & alia seruic.* & a little before that saith, *si plures sorores de domino rege tenuerint in capite, tunc primogenit' missa omnes acapitabunt, & homagium facient domino*

Regi, and therewith agreeth Britton fo. 171. And yet fol. 168 ſaith, that the eldeſt onely ſhall doe homage vnto the King for her ſelfe and her ſiſters. Thus haue you now the poſitiō of the ſaid ſtatute of Ireland by the old writers, by which ſaid ſtatute and the ſaid writers, it appeareth, ỳ this ſtatut of Prerogatiue, is but a confirmation of the common law, & doth only ſet forth & declare what the kings Prerogatiue is, when lands holden in chiefe diſcend to two coparceners. For in this the King hath a prerogatiue aboue a common perſon, aſwell for ỳ they ſhal ſeuerally hold of his highneſſe, as for ỳ that his highneſſe ſhal make the partition: for whether they be of ful age at the death of their anceſtor, or within age, or ſome of them of full age, and ſome of them within age, none of them that be of full age ſhal haue any liuery but with a partition, & that for the kings benefit: becauſe ỳ vpon the partition euery one of them ſhall haue, for his portion, ſome part of the lands that are holden of the king in Capite. For if ſome ſhould haue for their portion only the lands holden of other, then the king ſhould loſe his Prerogatiue in thoſe lands hereafter for euer, becauſe that they that haue them when they ſhall dye, hold nothing of the King in capite, and ſo might the King be diminiſhed of his auntient rights of the crowne, which were againſt all naturall equitie. Wherefore the law was euer, they ſhould all hold of the king. And that appeareth by the writs of liuery, in whych writs there is a prouiſo, that euery one of them ſhall haue in her purparte parcell of the lands that are holden of the king in Capite, as you may ſee in the new Natura breuium 259. c. And this liuerie muſt be ſued with a partition, or els it is miſſued, and it cannot be ſued forth vntill ſuch time as all ỳ writs of Diem clauſit extremum are come into the chācery & returned, as appeareth Liuery 29, Ỳ. 16. E. 3. And thē if all the coparceners be found of full age, then a writ ſhall go out of the Chancery to ỳ ſhiriffe to extend ỳ lands, & after

the

the extēt returned, a writ shal go forth to ẏ exchetor, to make partition & liuery according to thextent therof made, as appeareth in the new Natura breuium fol. 259. But if one of the coparceners bee within age and in the Kings Ward, then the partition may bée made in the Chancery, and then to haue a Writ of Liuerie to thexchetor of her part, or els it may be wholly done in the countrey by thexchetor, like as they had béene both of full age, that is to say, she of full age being there present in her owne person, and shée that is within age onely by Prochein amy, as it appeareth in the said Natura breuium fol. 261. which writ shall bée returned with the partition, and afterwards enrolled in the Chauncery. And it should séeme that if, after the writ of extent returned, she that is of full age do pray a writ of liuery with a partition, that she shal then neuer after haue a reextent, if so be that before it were so highly extended.

Like law is it if the partition bee not egall, and shée notwithstanding will accept it. But in all those cases shée that was within age if shée haue too little for her portion, shée may haue a writ of Participatione facienda against her other coparcener, or a Scire facias in the Chauncerie vpon the Record of Partition that is there, to shew why new partition or extent shall not bée made. By which writ if they be warned and come not, or come and say nothing, the land shall bée reseised into the kings hands, and a new extent made in the presence of the parties, which if it bée not extended as it should bée, they may pray a reextent before partition made: for after partition the praier commeth too late. And this may yée sée in the new Natura breuium fol. 62. H. & in H. 2. E. 3. 20. & Liuery 6. 13. E. 1. but learne whether she may defeat the partition by entre without suing any such Writs or no, because the other are in by matter of record, that is to say by liuery, whereunto shée is also after a maner pty. So is it not like ẏ case of a stranger,

for a straunger that hath eigne title may enter vpon them after Liuerie notwithstanding they haue the possession by matter of record. And it is said by Hil.T.17.Ed.3. fo.37. that aduowson assigned in Purpartie may bee defeated by putting debate vpon the presentment without any other proces. And note, that sometimes the king is to take a detriment by the liuerie, with the partition: As take the case to be, where some of thē be within age & in the kings ward, & some of full age, & their auncestour dyeth seysed not onely of lands holden in chiefe, but also of lands holden of other Lords, they of full age haue liuerie with a partition, now the king loses the wardship of as much of the lands that are holden of other as they haue liuerie of, and yet if no partition had bēne made, the King should haue had the wardship of the whole till the heire had come of full age, as Mombray affirmeth M.21.E.3.fo.3. And note also that of things entier the King shall haue by nonage of one of thē the whole, and the other that bee of full age get no part of it, ne yet liuerie thereof, ne partition: As take the case to be this: A Mano^r holden of the King in chiefe, whereunto aduowson is appendant, discends vnto three coparceners, & one of them is within age, & in the kings ward, the other two that bee of full age may sue their liuerie for the land with a partition, but not for the aduowson: For that shall wholly remaine to the king during the minoritie of her that is in ward. And this appeareth Quare impedit 1.T.31 E.3.M.38.H.6.9.M.21.E.3.f.32. And note, that if vpon partition made the chetour returneth that some haue their parts deliuered thē, & some not, because they sued not to him for it, they y^t did not sue, may at all times in the chauncerie sue out a writ vnto thercheto^r to haue the same deliuered vnto them, in which writ there shal be enclosed a transcript of ye partition, as it appeareth in the said new Natura brevium fol.262. and there it appeareth also fol.263. that liuery with a par-

a partition was sued for lands holden in Burgage: but by lykelyhood it was no common burgage: For as it appeareth the heire did his homage for the said lands. And note also, that if the coparcener of full age take the part of her sister which is in the Kings Ward, by lease or graunt of the king Durante minore etate, by this she suspends the partition. For notwithstanding she haue the one moity deliuered her with the profits of the other moitie, yet when her sister commeth to full age, both they shall sue a new liuerie with a partition, as appeareth in the said new Natura breuium fol. 262. c.

Le roy auera gard de heire marie per son pier deins lage de consent. Cap. 6.

SI mulier ante mortem anteceſſoris ſui, qui de rege tenet in capite, ante annos nubiles maritaꝫ fuerit, tunc rex habebit cuſtodiam corporis illius muliers vſque ad ętatem quod conſentire poterit. Et tunc elegat ipſa vtrum maluerit habere virum illum cui præmaritaꝫ fuerit, vel alium quem rex ei obtulerit. Nullus, qui de rege tenet in capite per ſeruitium militaꝫ, poteſt alienaꝫ maiorem partem terrarum ſuarum, ita quod reliduum non ſufficiat ad faciendum ſeruitium ſuum, ſine licentia Regis, ſed hoc non conſueuit intelligi de membris & particulis earundem terrarum.

This Chapter containeth two matters bęing diuers in nature, and therefore I intend to seuer and dyuide the one from the other, and to adioyne the latter branch hereof to the Chapter following, because they intreate both of one thing.

This statute is but a confirmation of the common law. For it is written in Gard. 147. 13. H. 3. in this wise.

Thomas ſummonitus eſt ad reſpondendum regi quaꝫ abduxit Helenam filiam & heredem E. &c. T. dicit, quod ipſe

assensum E. in vita ipsius E. desponsauit prædictam Helenam in facie ecclesię &c. & quia prædicta Helena est infra etatem, & cum ad etatem peruenerit potest consentire matrimonio vel dissentire, ideo remanet prædicta Helena in custodia dñi Regis vsque ad ætatem vt consentiat vel dissentiat, &c. Heere it is not set forth nor expressed, what is thage in a woman to consent to matrimony, and that is al that is to be sought vpon this statute: for Bracton in his first booke, in the latter end of a chapter which hath this paragrafe, 8. De minoribus, qui debent esse sub tutela & cura dominorum vel parentum, saith, quod fœmina septimo anno etatis suæ potest consentire matrimonio, & virum sustinere anno duodecimo: for hee saith, quod fœmina maius est capax doli quam masculus, & q maturiora sunt vota mulieris quam viri: So that by him it appeareth, that a woman may consent to matrimony after she is vy. yeares of age. And so I iudge the law was at that time taken. For it appeareth in Gard. P. 138. 12. E. 1. that a man that held by knights seruice married his heire apparant being vnder age and died, the Lord claimed the wardship of the bodie, and an issue was tended against him, that at the time of the said marriage the infant was of thage of seuen yeares, and this issue was receiued by the court for a good issue to barre the lord of the wardship of the bodie, quod nota. Howbeit it appeares not by the said booke, whether the heire were male or female, and Wangford sayes H. 35. H. 6. fo. 41. that when a woman is 7. yeares of age, her ancestor may then gather aid to marry her, which saying argueth as me seemeth, that she is marriageable: and also this seemes to make with Bracton. Howbeit the law is not so taken in these dayes. For shee cannot now consent to matrimonie before the age of twelue yeares. This statute speakes onely of the heire female, and yet Cheyny saith in H. 7. H. 6. fol. 10. that the heire male shalbe taken within the compasse of this statute by an equitie, because the statute is beneficiall: And so it should appeare Gard. 156. 30. E. 1, & 128, temps

E. 1.

E.1. where the ſonne was married in the life of his auncеſter, then being no more than of thage of fiue yeres, & when the child came to thage of twelue yeares thanceſter died: & the Court adiudged in this caſe, that the Lord ſhould haue the wardſhip of the body, to thentent that if the enfant hereafter ere he paſſe the age of fourteene yeares diſagree to the firſt marriage, the lord may haue the marriage of him: And ſo it may appeare by this booke, that this ſtatute is but a cõfirmation of the common law, for euery lord ſhall haue like aduantage in this caſe as the king ſhall haue, and therewith agrees Paſton H.7. H.6. fo. 11. adding further to this, that by the order of the common law before this ſtatute of Prerogatiue, if the heire would haue ſtood to the firſt marriage, when he or ſhe came to the yeares of conſent, they ſhould haue paied the double value: and by this ſtatute they pay nothing, and therefore the caſe was there: The kings tenaunt in chiefe hauing a ſonne and heire of thage of foureteene yeares, doth marry him and dyeth, the king offers the child marriage at the age of foureteene yeares, which hee refuſeth, and holds himſelfe to the firſt mariage, and adiudged that thenfant might ſo do, and that for the ſame hee ſhould neuer pay the double value ne ſingle of his marriage, and there Babthorp ſaith, that if the woman had dyed the heyre being within the age of conſent, the king ſhould haue had the marriage of the child, notwithſtanding that he was once married in the life of his auncеſter, for it was no marriage, but at pleaſure: and therewith agrees Britton fo. 169. Yea although the wife had died after the yeares of conſent, and before the child had come to thage of xij. yeares: quære of this matter, for I am informed that the law is not taken at this day as the ſaid booke is in 7. H.6.

Le roy auera fine pur alienation ſon tenant ſans licence. Cap. 7.

DE Serieantijs alienatis, ſine licentia regis, conſueuit rex arentare huiuſmodi Serieantias per rationabilem extentam inde faciendam.

It appeareth by Glanuil in the beginning of his ſeuenth booke cap.1.fol.44. that euery freeman hauing land, whether he had an heire apparant then liuing or not, or whether the ſaid heyre apparant would conſent to it or not, yet might hee giue ſome reaſonable portion of his lands with his daughter or any other woman in marriage, or to any man that had done him ſeruice, or in almes to any religious houſe, or to any other whome hee would, ſo the ſayd gift were made in his health: for in extremitie of ſickneſſe hee might not be ſuffered ſo to do, leaſt it ſhould bee thought to bee done rather of rage and fury of the mind, which through ſickneſſe for the moſt part commeth to men, than of any good diſcretion, and ſo might bee in his gift exceed meaſure. Howbeit ſuch a gift in ſickneſſe was euer good with the conſent of the heire or with his confirmation. Againe if hee had many ſonnes, hee could not without the conſent of his heire apparaunt giue any portion of his inheritaunce to any of the yonger ſonnes: for ſo might he diſherit theldeſt, through affection that the fathers lightly beare towards their yonger ſonne, more than towards the elder. But of his purchaſed lands, hee might giue the younger a portion, whether the eldeſt would or not. And if hee had none iſſue he might giue away all his purchaſed lands. But of the lands of his inheritance, hee might giue away no more but a reaſonable portion. And if the lands were departible amongſt the heires males, then might the father in his life time, giue euery child what portion hee would, ſo it exceeded not the portion that ſhould diſcend vnto him. And in that caſe whether the gift were of lands purchaſed or of inheritance it made no matter. Howbeit neyther Abbot nor Biſhop might in any of theſe caſes giue

any

any porcion of their lands away, without the Kings assent or his confirmation, because their baronies bee of the almes of the king or of his progenitors. Hitherto haue yee heard what Glanuil hath said. After this was the statute of Magna charta made, where, in the 31. chapter therof, it is written, Nullus liber homo det de cætero amplius de terra sua vel vendat de cætero, quã vt de residuo terræ suæ possit sufficienter fieri domino feodi seruicium ei debitum quod pertinet ad feodum illud. Which Statute is but a confirmation of the common Law, as it doth appeare by that that is written in Glanuill: for so one that had held by knights seruice, if hee might haue beene suffered to alien the greatest part of his land, hee would haue alienes the same peraduenture to hold of him but in Socage or by some small rent, & then hauing so little a liuelihood left to himselfe, how had hee beene then able to haue don the seruice of a knight or man of war, or what should his Lord haue had in ward to haue foũd one to haue done that seruice, surely little or nothing. Wherby the strength of the realme might haue much decayed: therefore it was a reasonable law to restraine him as mee seemeth. Howbeit Bracton in his first booke vnder the title, Si ille cui datum est, rem datam vlterius alteri dare possit, disputes this matter after a sort, that is to say, whether the tenant may enfeffe another against the lords will or not, & hee there affirmes hee may, yea and that to hold of him by what seruice hee will, and calleth it, Damnum absque iniuria, saying that though the wardship bee not so good, after alienation, to the chiefe Lord as it was before, yet the reliefe is as good in euery point, and then if the Lord bee serued either of the wardship or reliefe, hee hath all that knights seruice requireth. Howbeit, saith hee, when the tenaunt is so disposed to sell his land, the Lord shal be preferred to the sale therof before a straunger, giuing as much as an other will. It seemeth by Bracton that it was very doubtfull, notwithstanding

ſtãding the ſtatut of Magna carta, whether the kings tenant might alien his whole tenancie or not. And therfore was the ſtatut of Quia emptores terrarũ made, where it is prouided that from thencefoorth which is in the 18. yere of k. E. the firſt after Bractons time, it ſhould be lawful for euery freeman to ſell his lands or tenements or any part therof at his pleaſure to hold of the chiefe lord by the ſame ſeruice that the ſeſor held. Prouided alwaies that by any ſuch ſales ther comes no lands to Mortmain. This ſtatut remedies the miſchiefe that was found in the wardſhip, but not the other miſchief that is to ſay touching the defence of the realme. For when one mans liuing is ſo diſmembred, neuer a one of them is able to do the ſeruice of a man for want of liuehode: Yea and much more vnable ſince this ſtatut than before. For before where he gaue it to hold of himſelfe, hee reſerued ſomewhat in place of the land that went from him, where as now hee can reſerue nothing of common right. Howbeit notwithſtanding that the ſtatut of Quia emptores terrarũ, made it lawful for all other mens tenants, yet was it not lawfull by the ſaid ſtatut for the kings tenants ſo to do, that is to ſay nether to alien ỳ whole, nor any parcel therof without ỳ kings licence. And that appeareth by Britton. f. 88. Which ſpeakes generally that the kings tenants in chiefe cannot diſmẽber his fees without his licence. And becauſe ỳ before the time of king E. the firſt, they might haue alienes without licence to hold of themſelues, as others mens tenants might haue don in the like caſe, & thinking it more lawful for them ſo to doe after the making of the ſaid ſtatut of Quia ẽpores than before, it was thought good to prouide ſome ſtay for ỳ ſame by this ſtatut of Prerogatiue. And yet by ỳ words of the other chapter following it appeareth ỳ the kings tenant by grand ſerianty, could neuer haue alienes any lands holden by grãd ſerianty wout the kings licence. For that was ſo high a ſeruice, as Bracton in his firſt booke in the title de magnis ſeriãtijs

tijs names it Regale ſeruiciū, & ſaith it was firſt inuented vō in this realm in the time of the conqueſt, ỳ they could not diſmēber any part therof without the kings licēce. For he ſaith in another place in the ſaid bœk amongſt his writs of partition. Quod ſeriātia diuidi nō debet ne cogatur Rex accipere ſeruic ū ſuū per particulas. Howbeit ſince the making of this ſtatut of Prerogatiue, ſundy opiniōs haue riſen in theſe matters, as may appeare by the ſtatut made in the firſt yeare of king E. 3. c. 12. Which ſaith in this maner. Itē p ceo q̄ pluſours gents du Realm ſoy pleinōt deſte greues de ceo q̄ terres & teneñts q̄ ſont tenus en chiefe du roy, & aliens ſans ſon cōge ount eſte pris auant ceux heures en mains le roy & tenus cōe forfets, le roy, ne les teigne my cōe forfets en tiel caſe, mes voet & grand q̄ deſormes de tiels terres et tenemētes aliens ſoit reaſonable fine pris en le chancerie per due proces. So ỳ by this ſtatut it appeareth they took ỳ lands to be forfeited that were holden of the king in chief & alienes without his licēce. And ſo it appeareth by a bœke in T. 9. E. 3. f. 26. & Quare impedit 54. P. 14. E. 3. where Wilby ſaith that at this day lāds holden by graund ſerieanty & alienes without licence, be forfeited. For the ſeruice of one mans body cannot bee changed into another mans body without the kings aſſent. Alſo in the ſaid firſt yere of king E. 3. c. 13. It is prouided in this wiſe Et auxi come pluſors gents du people ſoy pleynont deſte greues per purchaſe de terres et teñts que ont eſte tenus des aunceſtors le roy que ore eſt come des honours, & meſmes tiels tenements ont eſte priſes en le maine le roy, auxi ſi come ils euſſent eſte tenus du roy en chief come de ſa corone, le roy voet q̄ ie mes ne ſoit home encheſon pur nul tiel purchaſe. By this ſtatute it appeareth that if a man hold of ỳ king as of any honor which is come to his highnes by diſcēt from any of his aunceſtors, that by reaſon thereof he ſhould not hold in Capite: For that was contrary to the law, as it may appeare by the words of the Statute, which ſaith that the people complained themſelues to bee greaued hereby,

which

Which is to be vnderstanded vniustly greeued, for by the words in the first chapter of Prerogatiua regis it appeareth that if it shall bee said a tenure in Capite, it must bee holden of the Crowne of a long time, s. ab antiquo de corona: And that is not when it is but newly come: and the statut of Magna carta c. 3. did help this matter by expresse words, If such an honour came to the Crowne by way of Eschete, but not if it came by way of discent, or any other way. And that Statute doth set forth certaine honours by name, which bee not of the auncientnesse of the Crowne, that is to say, the honour of Wallingford, Notingham, Bolingbroke and Lancaster. Therefore hee that holdeth of the King as of these honours, holdeth not of the King in chiefe. But other honours there bee which of so long time haue beene annered to the Crowne, that to hold of them, is to hold in chiefe, as it appeareth in the new Natura breuium fol. 256. a. & d. Where one held of the King as of a certaine honour to yeeld a certaine rent to the keeping of the Castell of Dover, this was there taken to bee a tenure in chiefe. And so it was where one held of his Highnesse as of the honour of the Abbey of Marle. Therefore learne what honours be of the auncientnesse of the Crowne, and what not. Also there is another statute made in the 34. yeare of the said King the 15. chapter, which saith in this wise.

Item accorde est & establie que alienation de les terres & tenements faits per gents que teignont du roy Henry besayl au roy que ore est ou des auters roys deuant luy, a tener de eux mesmes, que les alienacions estoient en lour force. Saluant touts foits a nostre seignour le roy sa Prerogatiue de temps son aiel son piere & son temps demesne. This latter statut doth argue ỳ the king ought to haue prerogatiue since the time of king E. the 1. & none before. And surely so was ỳ law taken, as it appeareth M. 20. E. 3. Ass. 122. & 124. & 26. lib. Ass. p. 140. & therfore to ỳ intẽt thes alienaciõs made in k. H.

the

before, should not now be brought in question, this statute was made so that his grace should haue fine for alienations without licence made since King Edward the first time, but not for any made before. And this should bée the meaning of this Statute, which (vnder correction) is mistaken by master Fitzherbert in his Natura breuium fol. 235. Howbeit for mine owne opinion, I doe not sée by all these Statutes, but that the King hath his Prerogatiue by the order of the common Law, at least wise, as the common Law hath béene taken since the time of king Edward the first, or else he could not haue it now, for any thing that I sée prouided for him by these Statutes. For this Statute of Prerogatiue, goeth but to that where his tenant in chiefe alieneth the greatest part without licence, Ergo, he may alien ẏ lesser part without licence, and so doth the statut expressely set forth, except you will say there be two licences vnderstanded here, that is to say, a general licence by thorder of the common Law, and a speciall licence by this Statute, the one to be requisite where any parcell is sold, the other when the more parcell is sold. Therefore enquire and learn what other mens opinions are vpon this Statute. For I find no booke to proue it common Law before Brittons time, for Glanuil ne Bracton speaketh any thing of it. And where this Statut of Prerogatiue speaketh onely but of knights seruice, the law is otherwise taken. For if one doe hold of the Kings Highnesse in Socage in chiefe, hée can alien no péece without licence. Then let vs sée what things may bée graunted or done without licence, and at what time: And how the tenaunts, that haue licence, shall pursue the same. The kings tenant that holdeth of him in chiefe, may grant a rent charge out of the same without licence, as it appeareth 40. lib. Ass. P. 5. M. 7. H. 6. fol. 2. For the king by that shall sustain no detriment. For his highnes néed not to hold it charged except he will. But if one hold an aduowson of ẏ

king

king or a rent, and graunteth ouer the same without licence, the graunte shall pay a fine. And that appeareth M.21.E.3. f.31. For there the case was that vpon liuery with a partition, an aduouson was allotted soly to one of ỹ coparceners, and after by composition betweene her & her fellowes, shee was agreed to leaue thaduowson againe in cõmon amongst them all and to present by tourne, & adiudged that this was an alienation, for the which shee must make a fine: For before she was tenant soly and now shee is become tenaunt ioyntly againe with her fellowes. The like law is it if there be lord, mesne and tenant, the king is the Lord and the mesnaltie is holden of him in chiefe, if the mesne release to the tenaunt without licence, hee shall pay a fine, as it appeareth 38.lib.ass.p.17. and yet the release goeth there by way of extinguishmẽt, but what then? hee holds now by ỹ seruice the mesne did, that is to say, in chiefe, and so thereby the tenancy is altered. The selfe same law is it if two iointenants be, and the one release to the other without licence, ỹ king shall seise for a fine, as it appeareth 40.lib.ass.p.5.P.8. H.4. fol.8. for the like reason that is made in the case of the coparceners before. But where there is nothing but a bare right released which goeth by way of extinguishment otherwise it is. For they of the Exthequer vpon a fine sur release only, vse to make out no proces to answere the king of an alienation. The kings tenant in chiefe may make a lease for terme of yeares without licence, but not a lease for terme of life, nor no higher interest, as appeareth P. 45.E.3.fo.6.& in the new Natura brevium fol.175. Then at what time or how he should pursue his licence: if the licence be granted by one king he cannot by vertue therof alien in the time of another king, as appeareth Offic.de court 29.P. 2.E.3. Like law if the lands be in the kings hands for Primer seisin or alienatiõ without licẽce, at which time ỹ king doth licẽce his tenant to make a feoffement, he cannot make

this

this feoffement till the lands be out of the kings hands, as appeareth H.21.H.7.fo.7. Also hée that hath licence may not vary from it in any point, Fines 124.P.18.E.2. As if the king licence the Abbot and Couent to make a feoffement, and the Abbot sole wil make it, this is void, as appeareth H.21.H. 7.f. 8. And there Frowike said that if the king licence mée to make a feoffement by déed, I cannot make it without déed Nec econtrario. And herewith agréeth the book of H.3.E.3.5. where the licence was to leuy a fine of the manor of Dale to finde two chapleins, and hée would haue leuied the fine leauing out the chapleins, and could not be suffered. And M. 30.E.3.17. the licence was to leuie a fine of ỹ manor of Dale yelding a rent, & he would haue leuied the fine of the manor with a Forprise, that is to say, excepting certaine acres, parcel of the manor, yelding the rent, & could not be receiued so to do, for that should not agrée with the licence, which wold the whole manor to be charged with the rent. But if there had béene no rent reserued, it séemes he might haue alienes any part of the manor by a licence of alienation of the whole manor, Tamen quere. For it should séeme to bée within the words of this Statut, which would you should not dismember the kings fée: and learne if the king licence his tenant to make a feoffement, whether he may make it vpon condicion or not, for they vse when a conditionall feoffemét is to be made, to expresse the condition within the licence, & if the condition be to make an estate againe to the feoffor, all this goeth vnder one fine & in one licence. P.33.H.6.f. 52. And note that if the Iustices before whom the fine shall bée leuyed, be enformed that the lands are holden of the king & that so appeare to them by any record, they will not take the fine til they haue séen the licence, nor yet engrosse it till they haue receiued a writ out of the chancery called Quod permittat finem illũ leuari, by which they may be fully certified of ỹ kings pleasure, which writ apeareth in ỹ new Na.brẽ.f.147.c.

And

and that they haue thus vsed, it appeareth 4. E. the second. Fines 115. But they neuer vsed to do vpō a recouery in these common writs of entry in the post, because the recouerer in such case, should pay no fine: for it was no alienation, since the recouerer claimed not in by the tenaunt. But now by the Statute made in the 32. yeare of king Henry the 8. c. 1. it is ordained that the recouerer, in such case, should pay a fine for alienation. And note that if an alienation be made without licence, the pardon is most commonly made vnto the feoffee and not to the feoffor. And so I suppose it ought to be, because the wrong groweth by the entre of the feoffee, which hath entred the kings fee without his licence.

And therfore the case is 14. H. 6. f. 26. that where ỳ kings tenaunt alieneth without licence, and take estate againe to him and to his wife in taile, the remainder ouer to his right heires, and dyeth without issue, and the king pardoneth the wife all maner of alienations, this was thought good to exclude the king of his fine that he should haue had for the said alienation. And it is further to be noted, that the licence must be purchased vpon a true suggestion, or els it is void. For if the kings tenaunt in taile, pretending to bee tenaunt in fee simple, will purchase licence to make a feoffement, this is a void licence, as it appeareth 29. Assise. 30. and 40. lib. Ass. 36. And in all cases where the kings tenaunt in chiefe will dismember his tenancie, that is to say, alien any parcell thereof without licence, the king may distraine for his whole rent in the parcell so alienes, but if he haue the kings licence to make such alienation, the alienee shall haue a writ in the Chauncery, called de onerando pro rata portione, that hee shall not further be charged than after the quantitie of the portion that hee holdeth. This writ you may see in the new Natura brevium fol. 233. a.

Le Roy auera ſon preſentiment nient obſtant q̄ leueſq; ad fait collation pur Laps.

DE Eccleſijs vacantibus, quarum Aduocationes ſpectant ad regem & alij preſentauerint ad eaſdem: Ita quod contentio inter dominum regem et alios oriatur ſi rex per conſiderationem curiæ preſentationem ſuam recuperauerit licet poſt Lapſum ſex menſium a tempore vacationis nullum currit ei tempus dum tamen rex preſentauerit infra tempus ſex menſium.

Of this chapter I fynd nothyng neyther in *Glanuil*, *Bracton* nor *Britton* ne in any other old wryter before the makyng hereof, ſauing that I fynd this tert both in *Bracton* and *Britton*. s. quod nullum tempus occurrit regi, which *Bracton* in the beginning of his firſt booke vnder this title que res dari poſſit applieth vnto lyberties appertaining vnto the crowne ſaying in this wiſe, quod ille qui huiuſmodi libertatem ſibi vendicat doeat huiuſmodi ad ſe pertinere quia ſi warrantum non habuerit ſpeciale in hac libertate defendere non poterit quamuis pro le pretendit ſeiſinam longi temporis, diuturnitas enim longi temporis in hoc caſu non minuit iniuriam ſed auget nec in iſto caſu currit tempus contra regem nec incumbit ei probatio quod ad ipſum pertinet cum conſtare debat ſingulis quod huiuſmodi de iure gentium pertineant ad coronam ſed ſunt alie res que pertinent ad coronam que non ſunt ita ſacre quin transferri poſſunt, ſicut ſunt fundi, terre & tenementa & huiuſmodi per que corona Regis roboratur & in quibus currit tempus contra regem ſicut contra quamlibet priuatam perſonam. This it appeareth by *Bracton* that this tert doth not ſerue the king in all caſes, for preſcribtion ſhall hold ſometime againſt the kyng in ſuch thinges as a man may preſcribe in, as it is common in our bookes, that one ſhall preſcribe for waiſe and ſtraiſe

and ſuch like againſt the king. And alſo it appeareth in the booke in Trauers 47. An 8. H. 5. that the king may ſurceſſe his time: as where it is found that tenant for terme of life hath forfaited his eſtate to the king, whereby the king ought to ſeiſe, if his grace ſeiſe not, but tarry till hee bee dead ſo that hee in the reuerſion entreth, hee can not then ſeiſe and ſo it may appeare vnto you, that though this bee an auncient tert, Quod nullum tempus occurrit Regi, yet in caſes it doth: and where this tert is onely appointed by this ſtatute to ſerue where the Biſhop taketh the benefit by Laps, yet by an equitie it is taken in ſome caſes to extend to a plenartie, that is to ſay, where a ſtraunger hath preſented, and his clerke is in by ſir monethes: As take the caſe to be where the king hath aduowſon in ward, and a ſtranger vſurps, and his clerke is in by ſir monethes, before the king bring his Quare impedit, yet ſhall this plenartie bee no plea againſt his highneſſe, but that hee ſhall recouer: and the reaſon of it is, becauſe elſe the king ſhould bee without remedy. For a writ of right, hee cannot haue, hauing but an eſtate in the thing as gardeyn. Wherefore in this caſe, nullum occurrit ei tempus, for els it ſhould appeare that a ſtraunger might hold a thing merely by wrong againſt him without any good ground or beginning that can bee intended of it, which caſe is agreed P. 18. Edw. 3. fo. 16. & P. 43. Edw. 3. fol. 14. But yet in this caſe the king may not put out the Incumbent which is admitted, inſtituted, and inducted in the benefice without ſute, that is to ſay, Quare impedit, becauſe it is ſo prouided by the ſtatute of 25. Edw. 3. capitulo 3. & 13. R. 2. capitulo 1. Like Law is it if the Kings tenaunt bee ſeiſed of a manor holden in chiefe, to the which aduowſon is appendaunt, and alieneth the manor with the aduowſon without licence, after the church becomes void, and a ſtraunger vſurps, and ſo twentie vſurpations one after an other, and afterward

theſe

theſe alienations without licence are found by office, and the Church becomes voide, the king ſhall preſent, notwithſtanding thoſe vſurpations, and if the Church bee full, his highneſſe may haue a Quare impedit againſt the Incumbent, Cauſa qua ſupra. And this appeares in Y. 4. Edw. 3. folio 2. But if the king bee ſeiſed of an Aduowſon in his demeane as of fee, it ſeemes that plenartie ſhall bee a good plea againſt him, for there his highneſſe hath remedy prouided him, that is to ſay, by writ of Right, and ſo is the opinion of *Shard* & *Wilby* P. 18. Edward 3. fol. 15, *Quere*, for in the booke of P. 43. Ed. 3. folio 14. the defendant durſt not abyde by the plea, but trauerſed the title that was made for the king. And learne whether plenartie bee a good plea againſt the Quéene, which holdeth for terme of life, the reuertion to the king, for this caſe is alſo left at large in P. 18. Edwa. 3. folio 13. Now to the ſtatute, where the wordes bee, that no Laps ſhall hold againſt the king, if hee preſent within ſix Monethes. Theſe wordes, if hee preſent within ſix monethes bee void, for though hee preſent not, yet title of Laps ſhall not take place againſt him by this ſtatute, and therfore the booke is P. 18. Edw. 3. folio. 21. that where the Laps was incurred in the life of the kings tenaunt, and before the Ordinarie preſented the tenaunt dyed, and it was aiudged that the king ſhould haue the preſentment, and not the Ordinarie: But peraduenture you will ſay in that caſe the king could not preſent within the ſix monethes, becauſe his tenaunt was yet aliue. What ſay you then to this caſe: if the Laps did incurre after the death of the kings tenant, and before office found, the king notwithſtanding ſhall haue the preſentment after office found, as it is agréed P. 14. H. 7. 22. and yet there the king might haue preſented after the death of his tenaunt before office found, and did not. And in the ſaid booke of P. 14.

H.7. fol. 21. it is left for a queſtion, ſince the Ordinarie cannot preſent by Laps againſt the king, how, and in what manner the cure ſhall bee ſerued in the meane time, that is to ſay, betweene the Laps and the kings preſentment, ſome think in that caſe that the Ordinary ſhould preſent one for the meane time, which ſhould bee remouable alwaies at the kinges pleaſure, and ſome other think hee ſhould ſequeſter the fruits to find the cure, *Ideo quare.* And *Bracton lib. tertio* in the writ of *Darreine preſentment* ſaieth, that this title of preſentment by Laps was giuen to the Ordinary by a conſtitution made in the Counſell of Lateranenſe.

Le Roy auera le gard de terres de Ideots. Cap. 9.

REx habebit cuſtodiam terrarum fatuorum naturalium, capiendo exitus eorundem ſine vaſto & deſtructione, & inueniet eis neceſſaria ſua de cuiuſcunque feodo terre ille fuerint, et poſt mortem eorum reddat eam rectis hęredibus, ita quod nullatenus per eoſdem fatuos alienentur, nec quod eorum hæredes exheredentur.

This Prerogatiue began in the time of king Edward the firſt, as it ſhould ſeeme to mee, becauſe I find none that wrote of it before *Britton*, for *Bracton* ſpeakes but a litle of Ideots, and that in his fifth booke, in the tytle of Exceptions againſt the plaintife, where hee ſayeth: It is a good exception to the perſone of him that complaineth or bringeth any action, to ſay hee is a fole naturall, quia tales non multum diſtant a brutis, qui ratione carent, nec valere debet, quod cum talibus agitur, ſed tamen diſcuſſio huiuſmodi exceptionis diſcretioni Judicis relinquitur: and ſaith,

ſayeth, like Law is it of him that could neuer heare, nor ſpeak from the tyme of his natiuity, & quod inuenienda ſunt eis neceſſaria, quoad vixerint per officium Iudicis pro qualitate perſonę & hereditatis quantitate, ſi hęres eſſe debeat, & ſi ſemel authoritate Curatoris acquiſierit, ſi fuerit inde eiectus, recuperabit per aſſiſum ſicut minor. By this it appeares that the king had no Prerogatiue but the Iudge. Nowbeit *Britton fo.* 167. ſaith that the king ought to haue his Prerogatiue herein, for theſe bee his words: Et pur ceo que aſcun foits auient, que aſcun heire eſt Sotte naſt, per quoy il neſt my able a heritage demaunder & garder: Vo- lumus que tiels heires de que que ils vnques teignont males & females demurgent en noſtre garde, ouesque touts lour heritages: ſauaunt a cheſcun Seigniour touts auters ſeruices que a luy appende, de terre tenus de luy, & icy remaynont en noſtre garde, taunt come ils durant en lour ſotty, & ceo ne voillomus nous my de ceux que deueignont Sottes per aſcun maladie. Vpon theſe words of *Britton*, I note 1 thre thinges, One is, that the king ſhall not haue the cuſtody durying their lyues, but during their Ideocy, the ſecond, notwythſtanding the land is in the Kinges, 2 handes, yet the other Lord ſhall haue their ſeigniories, which is by way of petition as I take it: and the third is, 3 that the other lord ſhall not haue the wardſhip of the heire nor of his lands but onely the king: which thre thinges by this ſtatute of Prerogatiue are not ſo plainlie ſet forth, and alſo by this Statute it appeares that the king ſhall haue the cuſtody of ſuch Ideots during their lyues for the words bee, Et poſt mortem eorum reddat eam rectis hęredibus, and not before. The manner how the king ſhall come to his Prerogatiue appeares by a booke caſe *Lib.* 30. E. 16. Edward. 3 where *Shard* ſayes that when the king is enfourmed that there is ſuch an Ideot, his high-

nesse shall send for him, and cause him to bée brought before his Chauncelour, or some other whom he shall appoint, and if by examination hée bée found an Ideot, yet his Highnesse ought not to seise hys lands, vntill such tyme as hée bée found an Ideot by office. And in the new *Natura breuium fol.* 232. *b.* it appeares, that the Kyng appoints all this matter to the Eschetour or Shirife, both to examine and enquire, in whych sayd *Natura breuium fol.* 202. *e.* It appeares, that this offyce when it is found, shall haue relation à natiuitate, to auoide all meane actes done by the Ideot, that is to say, his feoffement or release: But learne and enquire whether such feoffées shall bée put out by thoffice without any *Scire facias* to bée awarded against them. In *Scire facias.* 10. M. 18. E. 3. et 116. P. 32. E. 3. & 50. lib. ass. pla. 2. a *Scire facias* was awarded in that case, and learne also whether the office shall haue relation for the profits from the tyme of his natiuitie, or onely from the finding of thoffice. Then to the exposition, the woords bée. Rex habebit custodiam terrarum fatuorum naturalium. By these woords it appeareth that hée must bée a foole naturall, that is to say, a foole à natiuitate: for if hée were once wise and bécame a foole by chaunce, or misfortune, the king shall not haue the custody of him, and so it is agréed in M. 18. E. 3. *Scire facias* 10. And also in the new *Natura breuium fol.* 233. and the maner of the tryall of hym to bée a foole naturall, appeares in the sayd *Natura breuium fol.* 233. That is to say, yf hée cannot tell to twenty pence, or tell his age, or who was his father and mother, or such lyke thinges: whereby it may appeare hée hath no kynd of vnderstanding, in that, that is eyther for his profite or dammage. But if hée bée learned, or apt to learne, then is hée no Ideot as Maister *Fitzherbert* there thinkes, and *Greene* sayth in *Sauer de*

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default, 37. M. 31. Ed. 3. That if hee bee able to beget eyther sonne, or daughter, hee is no fole natural. The wordes of the statute be further, Capiendo omnes exitus eorundem sine vasto et destructione, et inueniet eis necessaria sua. By these words it appeareth that the kyng may take the profites to his owne vse, finding them their necessaries. And therefore in the booke before of 31. E. 3. the king dyd let the land vnto one of the cosyns of the Ideot, yelding a rent, but these words (inueniet eis necessaria) is not onely ment to the Ideots themselues, but also to all them that hang vpon them, as their wyfe, children, & family. And also by these words, sine vasto & destructione, it appeareth the kyng is bound to repartions of their lands and tenements. The words bee also, De cuiuscunque feodo terre ille fuerint, By those words *Gard.* 5. M. 3. E. 2. yt should seeme the king should bee preferred in this title of Ideocy, before any other lord whych might claime the Ideot as his warde, howbeeit learne what other men thinke therein. Et post mortem eorum reddat eam rectis heredibus, By these words it should appeare that the king should haue the custody duryng the lyfe of the Ideot, and that then an *Ouster la mayne* in nature of a Lyuerie shalbee sued of the same out of the kings handes: but whether yt shall bee made wyth the issues and profits from the tyme of the Ideots death, or onely but from the tyme of the tender of the *Ouster le maine*, learne, but if the lands that the king had so in custody bee holden of him in Capite, then notwithstanding these words of the statute, yet the king shall haue wardship, primer seisin, and all other Prerogatiues, as if his tenaunt in chiefe had dyed seased thereof, being no Ideot, as it may appeare in the new *Natura breuium fo.* 256. *d.* And there it appeares fol. 252. *b.* also, that although the Ideot held no lands of the kyng, yet a

Dicto clauſe extremum, ſhall bee awarded after his death, to enquire what lands hee dyed ſeyſed of, of whome they are holden &c. And it is to bee noted, that if one bee found Ideot by office, and before the king ſeiſeth the lands, the Ideot dyes, yet the king ſhall ſeiſe, becauſe of theſe words in the ſtatute, s. poſt mortem eorum, reddat eam rectis hæredibus, which his grace cannot doe, but upon a ſeiſure, and this appeares 18. E. 3. *Scire facias* 10. And note alſo that if there deſcend to an Ideot no poſſeſſion in lands, but onely a right, bee it right of entre, or title of entre, or right of action, the king ſhall not enter and haue the cuſtody of the ſame, as appeares in 1. H. 7. fol. 24. & 2. H. 7. fol. 3. and yet if his tenant of lands hold of him by knights ſeruice bee diſſeiſed, and dyeth, his heire within age, the king ſhall enter and hold the ſame in ward: and therefore learne what is the reaſon that ſhould make a difference in theſe acts. The words bee further, Ita quod nullatenus per eoſdem Fatuos alienentur, nec quod eorum hæredes exheredentur. By theſe words it appeareth the lands cannot bee alienes by the Ideot, nor the heires diſheryted, and therefore if the Ideot make a feoffement, or releaſe of his lands, and that found by office, the king ſhall auoyde it, as I haue before noted, and ſo likewiſe his heires after his death, by force of theſe words of the ſtatute. And yet it appeares *Sauer de fault* 37. H. 3. 1. E. 3. that a recouery by default paſſed againſt an Ideot, but execution of the Iudgement was ſtayed, becauſe of the kings poſſeſſion: Which proues, that notwithſtanding the king haue the poſſeſſion during the Ideots life, yet his Highneſſe hath no freehold thereby, but onely a bare cuſtodie, for the freehold remaines in the heire. And therewith agrees 17. E. 3. fol. 11. But what then? this recouerie is not like to this alienation, for by the recouery the Ideots heire is not diſhe-

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rited by that of his auncestour, if so bee that the recouerie were vpon a good title. And it appeares in P. 33. H. 6. fol. 18. That an Ideot shall not be received to plead by Gardeyne or Procheine amye, but hee him selfe shall appeare in proper person in euery action brought against him, and whosoeuer will plead best for him shall bee admitted. And learne and inquire if the Ideot bee but tenaunt for tearme of lyfe, or yeares, if the King shall haue his prerogatiue therein or not, because the Ideot cannot alyen that land to the dysherison of his heire: and if hee shall, how the lessor shall punyth the waste don in the Kings tyme. And learne also whether the King shall haue the goods of an Ideot aswell as land. Then last of all, if one bee found Ideot which is none in deede. The maner how hee shall auoid thys office appeares in in the new *Natura brevium fol.* 233. a. That is to say, hee that is falsly found to bee an Ideot, eyther by him selfe, or his friends, shall come into the Chauncery, or before the Chauncelour of England, and the Kings Counsell, and pray to bee examined of his Ideocy, or hee may sue a writ out of the Chauncerie, to him that hath the keeping of him, to bring him before the King and his Counsell to bee examined, and if hee be found vpon his examination to bee no Ideot, then by that is thoffice and all the rest of the proces auoyded without any farther trauerse: Howbeit where a *Scire facias* is awarded against the feoffee of the Ideot, there the feoffee appearing vppon the *Scire facias* may trauerse the Ideocy, as it appeares hee did in the booke before, *Scire facias* 10. M. 18. Ed. 3. And note that by a Statute made in the 32. of Henry the eyght, the 46. chapiter, Ideots and their lands be in the surney of the Court of Wardes, and the same court may let and set their lands, but not

to

to grant ỹ cuſtody of their bodyes for any wordes that I can perceiue in the ſame ſtatute

Le Roy purueiera pur luy que neſt de ſane memory. Cap. 10.

ITem Rex prouidebit, quando aliquis qui prius habuerit memoriam & intellectum non fuerit compos mentis ſue, ſicut quidam ſunt per lucida interualla, quod terre et tenemẽta eiuſdem ſaluo cuſtodiantur ſine vaſto & deſtructione, et quod ipſe et familia ſua de exitibus eorundem viuant & ſuſtineantur competenter, & reſiduum vltra ſuſtentationem eorundem rationabiliter cuſtodiatur ad opus ipſorum, liberandum eiſdem quando memoriam recuperauerint, ita quod prædicta terre & tenementa infra prædictum tempus nullatenus alienentur, nec Rex aliquid de exitibus percipeat ad opus ſuum. Et ſi obierit in tali ſtatu, tunc illud reſiduum diſtribuatur pro anima eiuſdem per conſilium Ordinarij.

It appeares by *Bracton* in his fyfth booke amongſt the exceptions to the perſon of the plaintife, that it is a good exception to ſay, that hée that is demaundant or pleintyfe is of Non ſane memorie. For theſe bée his wordes. Competit etiam tenenti exceptio peremptoria ex perſona petentis, ſi petens furioſus fuerit, vel non ſane mentis, quod diſcernere neſciat, vel quod omnio nullam habeat diſcretionem: tales non multum diſtant a brutis que ratione carent, nec valet quod cum talibus agitur durante furore. Poſſunt enim quidam aliquando dilucidis gaudere interuallis, & quidam habent furorem perpetuum: quod autem actum fuerit cum talibus tempore quo dilucidis gaudent interuallis ratum erit, ac ſi cum alijs ageretur ſiue furorem ſuum ſimulauerint, ſiue non, acquirere quidem non poterunt in ipſo furore, vel cum non fuerint ſane mentis aliqui qui conſentire non poſſunt, nec acquiſita alicui re vel dare, quia alienationi

alienationi non magis conſentire poſſunt, quam acquiſitioni, ſed ſeiſinam retinent, quia animum mutare non poſſũt quem acquirendo cum eſſent ſane mentis habuerunt, & furor ſuperueniens nihil adimit non maius quam morbus incurabilis, ſicut lepra: ſecundum quod dicitur quod multa impediunt contrahendo que non dirimunt contractum, & ita ſunt multa quę impediunt promotionem, quę non deijciunt iam promotum. Et talibus de neceſſitate dandus eſt Tutor vel Curator. So it appeareth by *Bracton*, that in his time it was thought expedient, that folkes that were deſtraught ſhould haue a tutour, or one that ſhould take the charge of them, which office ſince is reuolued vnto the king, & made parcell of his Prerogatine. For as *Fitzherbert* in his *Natura brevium fol.* 232. very well ſaith. The king is the protectour of all hys ſubiects, and of all their goods, lands, and tenements, and therefore of ſuch as cannot gouerne themſelues, nor order their lands and tenements, his grace (as a father) muſt take vpon him to prouide for them, that they themſelues, and their things may be preſerued. And becauſe that lunacy or madnes ys not from the tyme of anes birth, (as Ideocy is, but commeth ſometimes by fyts or courſes, his grace therefore can claime no certey ne intereſt in the lunatike perſon, lyke as he may doe in the Ideot: *Garde.* 5. H. 3. C. 3. And therefore it is ordained that his grace ſhall prouide for ſuch in the time of their ſayd Lunacy or maladies, that they or their family may be ſuſtained, & their thinges preſerued, accordingly as it is ſet forth in this ſtatute. And learne whether the kinges intereſt is ſuch, that after the death of the lunatike or the recouery of his wits againe, there muſt be an *Ouſter le mayne* ſued, as it is ſued in the caſe of the Ideot, or els ẏ the kings intereſt is auoided maintenant by the death, or recouerie again of the lunatike perſon.

fitzh. fol. 232. a.

Le Roy

Le Roy auera Wreck, Balenas, & Sturgiones. Cap. 11.

ITem Rex habebit Wreckum maris per totū regnum, Ballenas & Sturgiones captas in mari vel alibi infra regnum, exceptis quibuſdam priuilegiat' locis per regem.

This Prerogatiue the king euermore had by the order of the common Law, as may appeare by *Bracton* in his ſecond booke vnder the title, Que res dari poſſit: **where hee ſaith in this wiſe,** Sunt etiam alie res que pertinent ad coronam propter priuilegium Regis, & ita communem non recipiant libertatem, quin dari poſſunt & ad aliud tranſferri, quia tranſlatio nulli erit damnoſa, niſi ipſi regi ſiue principi. Et ſi huiuſmodi res alicui conceſſe fuerint, ſicut wreckum maris, Theſaurus inuentus, Craſſus piſcis, ſicut Ballena et Sturgio, et alij piſces regales, oportet, ſi queſtio inde habeatur, quod ille qui huiuſmodi libertatem ſibi vendicat doceat huiuſmodi ad ſe pertinere, quia ſi warrantum non habuerit ſpeciale in hac libertate, defendere non poterit, quamuis pro ſe pretendat ſeiſinam longi temporis, diuturnitas enim temporis in hoc caſu non minuit iniuriam ſed auget, nec in primo nec in ſecundo caſu currit tempus contra regem, nec ad ipſum incumbit probatio quod ad ipſum pertineat, cum conſtare debeat ſingulis quod huiuſmodi de iure gentium pertineant ad Coronam.

And alſo in an other place of the ſaid booke vnder the title, De libertatibus quis eas concedere poſſit, **he ſaith,** Habebit Rex præ ceteris oĩbus in regno ſuo priuilegia de iure gentiū propria que de iure naturali eſſe debent inuĕtoris, ſicut Theſaurus, Wreckū, Craſſus piſcis, Sturgio, Waiuæ q̄ in nullius bonis eſſe dicuntur, & dicūtur priuilegia, q̄ quamuis ad coronam

ronam pertineant, à Corona ſeperari poſſunt, & ad priuatas perſonas tranſferri, ſed de gratia ipſius regis ſpeciali, cuius gratia & conceſſio ſpecialis ſinon interuenerit tempus a tali petitione regem non excludat, & in hoc caſu comprobatione non egeat, quia nullum tempus currit contra eum.

And in this agrees *Britton fol.* 26. & fo. 85. ſo that by theſe wꝛyters it ſhould appeare that at this time no man myght pꝛeſcribe in Wrecke de la mere. And that the law was then ſo taken it may appeare by theſe woꝛds within the ſtatute, ſcilicet, exceptis quibuſdam priuilegiatis locis per Regem, which argues, that that muſt bee by the kings graunt, foꝛ no place can otherwiſe be pꝛiuiledged by the king. Howbeit *Hull* and *Thirn'* in P. 11. H. 4. fol. 16. think that a man may pꝛeſcribe in Wrecke de la Mere, *Tamen Quere*, foꝛ this Statute, and *Britton* & *Bracton* are ſince the time of Limitation: that is to ſay, king Richard the firſt. The woꝛds of the ſtatute be farther, Ballenas & Sturgiones. *Bracton* in the ſecond booke vnder the title of Wrecke de la mere ſaies, quod de Sturgione ita obſeruatur, quod rex habebit illum integrum propter ſuum priuilegium, de Ballena vero ſufficit ſecundum quoſdam ſi rex inde habuerit caput & Regina caudam. So in *Bractons* time it was doubted by the common law whether the King ſhould haue this great fiſh called Thirpole wholy oꝛ not. And ſo likewiſe in *Brittons* time, as it may appeare in his booke fol. 27. which now this ſtatute hath made clére and without queſtion.

Le Roy auera leſchetes des terres des Normans et aliens de qui que ils teign̄ ſauaunt les ſeigniories as ſeigniours. Cap. 12.

ITem habebit eſcaet' de terris Normanorum cuiuſcunq; fe-odi fuerint, ſaluo ſeruicio quod pertinet ad capitales dominos

minos feodi illius, et hoc ſimiliter intelligendum eſt, ſi aliquis hæreditas deſcendat alicui nato in partibus tranſmarinis, & cuius anteceſſores fuerunt ad fidem Regis Franciæ, de tempore Regis Iohannis, et non ad fidem Regis Angliæ, ſicut contingit de Baronia Mounmete, poſt mortem Iohannis de Monumeta, cuius hæredes fuerunt de Britañ, et alibi, de feodis aliorum recuperauerit Henricus plures Eſcaetas de terris Normannorum occaſione prædicta, & eas contulit tenendas de capitalibus dominis feodi per ſeruitia inde debita & conſueta. It appeareth by the Chronicles, that King Iohn was the laſt Duke of Normandy, and that in his time Normandy was loſt, whereupon king Henry his ſonne, as it may appeare by the latter clauſe of this chapiter, recouered diuers eſcheats of land within this Realme holden by Normans, which after they began to adhere to the French king, the Kings enemie, and became Traytors vnto his Highneſſe, they forfaited all their lands by order of the Common Law, to the king, of whomſoeuer they were holden. Howbeit in ſuch caſes after the forfaiture, if the king had giuen theſe lands to any other, hee might not haue giuen them to hold of himſelfe, but onely of thē of whom they were before holden, as this ſtatute plainly declareth, that king Henry the third ſo did. And likewiſe in Mich. 20. E. 3. Aſſ. 124. H. 46. Ed. 3. Petition 19. it appeareth, that if the king do otherwiſe, his patentē ſhal be repelled, and made to hold of the Lords of whom the lands were holden before the Treaſon, and that by a Petition of right to bee ſued vnto the king, for the redreſſe of the ſame, for other remedie haue they none, and diſtraine they may not, as appeareth in the new *Natura brevium folio* 159. *A.* And further it ſhould appeare by the ſaid booke of 20. Edw. 3. that the king ought not to reteine ſuch land in his owne hands no while, but muſt diſpoſe them ouer, to hold of them that were Lords thereof

at

at the time of the Treaſon committed. Hereby may you gather, that this ſtatute in his firſt braunch is but a confirmation of the common Law, and that long time before the making hereof, king Henry the third had this prerogatiue, as it doth manifeſtly appeare in the latter braunch thereof. And alſo by *Bracton* in his firſt booke in the title, De cuſtod' & Maritagijs dominorum, and likewiſe in *Britton folio* 28. The wordes of the ſtatute bée further. Hoc ſimiliter intelligendum eſt, ſi aliqua hæreditas diſcendat alicui nato in partibus tranſmarinis, et cuius anteceſſores fuerunt ad fidem regis Franciæ de tempore regis Iohannis Anglię, ſicut de Baronia Monumete, poſt mortem Iohannis de Mounmeta, cuius hæredes fuerunt de Brittannia, vel alibi. By this braunch it ſhould appeare, that at this time men of Normandy, Gaſcoigne, Guyon, Angeo, and Brittaine, were inheritable within this Realme, as well as Engliſh men, becauſe that they were ſometime ſubiect vnto the kings of England, and vnder their dominion, vntill king Johns time, as is aforeſaid, and yet after his time, thoſe men (ſauing ſuch whoſe landes were taken away for Treaſon,) were ſtill inheritable within this Realme, till the making of this ſtatute. And in the time of peace betwéene the two kings of England, and Fraunce, they were aunſwerable within this Realme, if they had brought any action for their lands and tenements, as it doth plainly appeare by *Bracton* in his fifth booke in the title, De exceptione quia alienigena, for theſe be his wordes. Eſt autem alia exceptio que competit tenenti ex perſona petentis, propter defectum nationis que dilatoria eſt, et non perimit, actionem. Vt ſi quis alienigena qui fuer ad fidem Regis Francię, et actionem inſtituit verſ⁹ aliquem qui fuerit ad fidem Regis Anglię, talis non reſpondeatur ſaltem donec terre ſint communes, nec etiam ſi Rex ei conceſſerit ſpecialiter placitare, quia ſicut Anglicus non

auditur

auditur, in placitando aliquem de terris & tenementis in Francia, ita non debet alienigena & Francigena qui fuerit ad fidem regis Franciæ audiri placitando in Anglia.

Note here that he saieth that this exception is but dilatorie and not peremptorie, which, proueth that he shall haue his action at an other time, that is to say, in the time of peace. And also he saieth after, Donec terre sint communes, which is as much to say vntill such time as there is peace betweene Fraunce and Ingland. Also *Bracton* in his third booke vnder the title quod mulier ostendat warrantum per quem petit dotem sayeth si warrantus fuerit ad fidem regis Franciæ & excipiatur de warranto remanebit dotis exactio in suspenso imperpetuum vel ad tempus saltem donec terre fuerint communes. This warrant of Dower, is the heire of the husband for by the auncient Law by *Glanuil Libe. 6. cap. 16.* if a woman had brought her writ of dower against anie other but the heire, he was not bound to aunswer her dower vntill such time as she had brought fourth her warrant that is to say, the heire. In like case after she is endowed she is not bound to aunswere to any other without the heire, and if it might appeare that the heire had no right in the two partes, then should she be barred of her action of dower, as it appeareth in the case before that his right is suspended when he is a Frenchman and the two realmes at warre. Howbeit it appeareth as I haue sayd before that this exception is not peremptory, but that after the two realmes be again at peace, she shall haue her dower *Dower* 179. M. 4. H. 3. The words of this braunch be also in the Copulatiue, that is to say, that the auncester must be of the allegeaunce of the French king, and that the heir of the said auncester is borne in the part beyond sea. I put case than that the auncestor were of the allegance both of the one king and

and the other, that is to ſay, the French King and the King of England, whether is this within the compas of the Statute? For Bracton in his ſaid 5. booke vnder the title De exceptione quia alienigena ſaith. Quod ſunt aliqui qui ſunt ad finem vtriuſque ſicut fuit W. Comes Mareſcallus & manens in Anglia & Michael de Scins manens in Francia & alii plures, et ita tamen quod ſi contingat guerra moueri inter Reges remaneat perſonaliter quilibet eorũ cum eo cui fecerit ligeantiã. Wherby it ſhould appeare that of ſuch as were in allegeaunce to both kings, the King ſhould haue no eſchetes of their lands. For the words of the Statute be not onely ad fidem Regis Franciæ, but alſo, & non ad fidem regis Ang. ideo quere. And who ſhall bee inheritable at this day that bee borne in the parts beyond the ſea, and who not. See the Statute thereof made in the 25. yeare of King Edward the third, de natis in partibus tranſmarinis.

Si lheire le tenaunt le roy en chiefe entre auaunt liuery nul franktenement luy accrue & la feme perdra ſa dower. Cap. 14.

QVando aliquis qui de rege tenet in Capite in fata decedat & heres eius ingrediatur tenementum quod anteceſſor ſuus tenuit de rege die quo obiit antequã fecerit homagiũ regi & ſeiſinam ſuam ceperit per regem tunc nullũ accreſcit ei liberum tenementum. Et ſi obierit ſeiſitus p idẽ tempus vxor eius nõ habebit dotẽ de tenemento illo, ſicut contingit de Matilda filia comitis Hereford vxoris manuſel mareſcalli, q̃ poſt mortẽ Wilhelmi mareſcalli Angliæ fratris ſui cepit ſeiſinã caſtri & manerii de Scrogoil, et obiit in eodẽ caſtro antequã intraret p regẽ et feciſſet ei homagiũ, &

vnde concordatū fuit quod vxor non haberet dotē, eo quod vir suus non intrauit per regem immo per intrusionē, sed hoc non intelligatur de socagio & paruis tenuris.

This Statute is but an affirmation of the common law, as it may appeare by the case compriſed in the ſame which was ruled before the making of this Statute and iudged according to the effect thereof. And this Statute ſeemeth to put a paine vpon the heires that will entrude before they haue ſued their liuery, and taketh away from them the frée hold that the Law had elſe veſted in them: And yet it is not taken ſo generally as the words bée, but ſpecially and only of intruſions after office found, and not before: And therefore if the heire enter after the death of his auncestour and before office found, and the King pardoneth him all entries with the profits, this is good and amounteth to a ſpeciall liuerie, ſo that the heire needeth to ſue no more liueries, and yet if thentruſion were after office and then the king would pardon him, it were void, becauſe that at the time of the pardon hée had no frée hold, whereupon the pardon might enure H. 3. H. 7. folio. 3. Like law is if the heire before office enter and make a feoffement and the King pardoneth the feoffée it is good, and yet ſuch a feoffement after office, with a pardon, were void for the reaſon I haue made before. Like law is if the entry bée before office and the pardon after office this is void, becauſe that by office the king taketh the poſſeſſion from the heire or feoffée, and then is there no poſſeſſion whereupon the pardon may enure, and ſo void. For the office, when it is found, hath relation from the death of the Kings tenaunt, if it bée ſo that the King doe not releaſe his right before the office found, and that appeareth P. 16. Edward the fourth, folio 1. where it is alſo ſaid that the pardon muſt bée aſwell of profits as of the entry, or elſe after office found, the King ſhall bée anſwered of the profits, and M.

13. H. 4. fo. 3. there is a difference put betweene the pardon that is made to the heire, and the pardon that is made to the feoffee: For in the caſe of the feoffee the pardon muſt bee ſpeciall rehearſing all the matter. Then let vs ſee further for the endowement, if after the death of the Kings tenaunt the heire doth not enter but dye before office found, his wife ſhall be endowed becauſe of a poſſeſſion in law that was in him. P. 1. H. 7. 17. M. 38. Edward the third 30. Like law is it if he dye after office found and before any entry H. 4. H. 7. fol. 1. Like law is it if hee enter before office and dye.

But if the King be once ſeiſed by office, and the heire dye before liuery, and the nert heire will enter before a Deuenerunt ſued and dyeth, his wife ſhall not be endowed, for in that caſe it is an intruſion after office. For when the King is once ſeiſed by office, this ſeiſine remaines till liuery or Ouſter le maine bee ſued. And this caſe is P. 1. H. 7. 19. The words of the Statute be further ſed hoc non intelligatur de ſocagio & paruis tenuris. Theſe words are to be intended of common Socage, for if hee hold of the King in Socage in chiefe, and will intrude after office, nullum accreſcit ei liberum tenementum, no more than if the lands were holden by knights ſeruice in chiefe.

And it is a generall ground, that in all caſes where hee that ſueth his generall liuery or Ouſter le maine miſſueth the ſame and entreth thereby, this entry is an intruſion vpon the Kings poſſeſſion, and his wife of that poſſeſſion ſhall not be endowed as appeareth H. 21. Edward 3. fol. 1. M. 24. E. 3. 65.

Le Roy auera leſchetes que auoigne quant temporalties deuſque ſont en ſes mains. Cap. 14.

ITem Rex habebit eſcaetas de terris libere tenentiũ Archiepiſcoporum et Epiſcoporũ quando ipſi tenentes dãnati ſũt pro felonia facta tempore vacationis, dũ temporalia eorundẽ fuerunt in manu domini regis conferend' cui voluerit imperpetuũ, ſaluo ſeruicio quod ad dictos prelatos inde pertinet & fieri conſueuit.

Of this ſtatute I finde no boke caſe, Howbeit the letter of it is very plaine and nedes no maner of expoſition. For it goeth not to any other eſchetes than ſuch as growe vpon offences. And if the crime or offence were done while the land was in the Kings hands, notwithſtanding the party were not attainted thereof vntill ſuch time as the lands be out of the Kings hands, yet the King ſhall haue the eſchete by force of this ſtatute. And here it appeareth how the King ſhal not hold the lands forfaited ſtil in his hands, but muſt giue them ouer to hold of them that they were holden of before.

Per graunt de rey fees, auowſons, & dowments des femes, vepaſſe, ſi ne ſont ſpecialment reſerues. Cap. xv.

QVando dominus Rex dat vel concedit alicui manerium vel terram cum pertiñ, niſi faciat in charta ſua vel ſcripto expreſſam mẽtionem de feodis mill' aduocationibus eccleſiarum, & dotibus cum accidunt ad prædictum manerium vel terram pertineñ tunc his diebus rex reſeruat ſibi eadem feoda, aduocationes cum dotibus licet inter alias perſonas non fuerint obſeruata.

It

It is agréed in T.43.E.3.f.23. that by the order of the cōmon law before this statut, if the king had béene seised of a manor to the which aduowson had béene appendant, & had géeuen it to me, notwithstanding that in the kinges grant there had béene no mention made of the auowson nor of these words cum pertiñ, yet thauouson had passed from his highnes by the said grant: for in those daies the king was but a common ꝑson, and a writ of Entre sur disseisin, and al other actions did lye against him as against any other common person. And therfore in As.431.A.20.H.3. A writ of entry was brought against one supposing ẏ he had no entry but by disseisin, which ẏ king did to the demaundant when he was wͤin age, & also Wilby.M.24.E.3.54. reporteth that hee hath séene a writ which was Precipe H.regi Angliæ, in place whereof is now giuen peticion by his prerogatiue. And so it is said.l.H. 22.E.3.13 ẏ in the time of K.H.3. & before the king should be ēpleded as any other cōmō ꝑson. But king E. his son ordeined ẏ none should sue him but be driuen to their petition. Howbeit (sauing reformation of these bookes) I think ẏ law was neuer so ẏ a man should haue any such action against ẏ king. For Bracton, which wrote in king H.3. time or néere thereupon, saith in his third booke, under the title Contra quē cōpetit assisa in this wise: Inter cetera videndū est quis sit ille qui deiecit, princeps ex potentia vel aliquis nomine suo vel iudex qui male iudicauerit, an priuata persona, si princeps vel rex vel alius q̄ superiorē non habuerit nisi deum, contra ipsum nō habebitur remedium per assisam, imo tantum erit locus supplicationi, vt factum suum corriget & emendet quod si non fecerit, sufficiat ei pro pena quod deum expectet vltorem. qui dicit mihi vindictam & ego retribuam, nisi sit qui dicat quod vniuersitas regni & Barronagium suū facere possit & debeat in Curia ipsius regis, sed si alius ex facto & dissesina principis statim vel ex post facto in seisinam institerit, quamuis talis incidat in assisam & in penam vel tantum ad restitutionem secundum quod seisina ad ipsū peruenerit statim vel

ex post facto sine principe tamen conueniri non poterit per assisam, quia licet quodamodo disseisinam fecerit tamen nõ ꝑ se sed cum alio. s. cum principe & ita quod sine eo respõdere non potuit, & ita non procedit assisa. Indirecte tamen & quasi ex incidente et sine breui comprehendi poterit persona principis ad hoc quod factum suum emendet, vel in ꝑsonam suam redũdabit iniuria manifeste, vt ecce. Esto quod impetretur assisa tantum super eum ad quem res translata est sine principe, & qui tenetur ad restitutionem et ad penã, vel ad minus ad restitutionem, & ipse respondeat quod sine principe qui fecit iniuriã per se vel per suos respondere non debeat, quia ipse princeps per se fecit iniuriam vel ipsi duo insimul, extunc erit factum & iniuria in manu domini regis, qui dicit debet in facto quasi warrantus, & quod tunc poterit si warrantus voluerit factum suum emendare quasi a lege compulsus, & quam in persona sua cum sit et submissus debet firmiter obseruare. So that by Bracton it appeareth that no action lyeth against the king, but the partie greeued is driuen to sue to the King by petition. But the reason why that aduowsons should passe in the Kings case by the order of the common law, though it were not expressed in ẏ grant, was this I suppose, because that lands or tenements were not then counted as things that touched the royal estate, or ẏ made the kings crowne like as Liberties or franchises did. For the one a commõ person might haue aswel as the king, but the other none might haue but the king or such as were able to shew his grant thereof, and therefore saith Bracton in his first boke vnder the title que res dari possit that for lands currit tempus contra regem sicut contra quamlibet priuatam personam Which is as much to say, that if the King had right to any such lands or tenements, and had surcessed his time so long, that it exceeded the time of limitation in a writ of right, his highnes had lost then his right for euer. And herewith agreeth Britton fo. 29. But that is (saith Britton) of lands, parcell of the Kings eschetes or purchased

 land

lands, and not of the auncient demesnes of his crowne, for of those nullum currit tempus, if he haue any right to demaund them. So that by Britton this reason will not serue for lands parcell of the Crowne. Ideo quere veram rationem. Howbeit since this statute made, what lands soeuer they be, those things that are comprised in this Statute passe not without making expresse mention therof. Hetherto we haue spoken of the reason why at the common Law aduowsons should passe by graunt of the manour without being named, now let vs see how since the making of this Statute it shall likewise passe by graunt of the manour without being expressely named and how not, M. 5. E. fo. 66. And if the king render by to him that was in ward, at full age his lands, or to a bishop his temporalties, although he make no mencion of knights fees or aduowsons, yet al passe therewith, for like as the kings seisin in such cases is by these words omnia terras & tenementa, without speaking of fees or aduowsons, euen so being sued out of his hands by these words, omnia terras & tenementa, fees and aduowsons doe passe without making any mencion therof. And Lucry 30. T. 16. E. 3. Where after the death of an ideot, the king rendred againe the lands to the heire not making mencion of fees or aduowsons, and yet he had them. And likewise H. 41. E. 3. f. 5, T. 44. E. 3. f. 25. the king granted the temporalties to one that was elect bishop before he was consecrate, & adiudged that fees & aduowsõs passed without making any mencion therof, & yet at the time of ỹ grant hee was not bishop, for he lacked consecration. And the reason in all these cases is, for ỹ the king was but seised in another bodies right, & by his liuery he giueth nothing vnto them but onely restoreth the to their right they had before. Like law should it appere to be by Fynchden H. 29. E. 3, 7. If aduowson of a church be appendant to a priory, which priory is seised into ỹ kings hãds by reason ỹ an alie is patrõ of it, & afterward ỹ king diuideth

the said Priory cum pertinen̄, not making mention of thauowson vnto the said Prior yelding a rent, to haue and to hold the same during the war. And his reason is this, for that the right and free hold in this case remaineth still in the Priour, notwithstanding any such seisin, and the king is but to haue an annuel profit thereof, and no right, but if any be to sue dower or liuerie w̄ a particion out of the kings hands, they by that cannot haue thauowson, if mencion bee not thereof made, no more than they can that claime by Graunt, and yet the king rendreth them the thing in respect of a right before, as hee doth in the other cases. But what then? they claime not the whole land that is in the Kings hands, but onely parcell thereof, and then thauowson euermore abideth with that that remaines, if expresse mencion bee not made thereof, and so not like the cases before where the king makes liuery of the whole. And this case appeareth also in the said booke of M. 5. E. 3. f. 67. And note that in all cases where the king seiseth a thing as his owne proper right as he doth in the case of wardes, eschete, and such like, there nothing passeth by graunt of the appurtenaunce, if expresse mencion bee not made of the thing that is appurtenant by name: and therefore the case was H. 29. E. 3. f. 7. That where auowson of a Church did belong to a Priorie, which Priorie was seised into the kings hands ratione guerre, and letten againe to ferme for a rent to the Prior, and afterward the king granted away the patronage of the Priory to a man and to his heires, and the custody (during the warre, of the Priorie with all that belongeth to the same of the rent reserued with all the profits of the Priory that the king had seised, and yet thought that thauowson passed not, for that it was not named. But if there be words in the kings graunt that doe amount to asmuch as thexpresse naming of the thing or couteruaile as much, then the thing passeth as farre forth as if it were expressely named. And there-

therefore if a manno⁊ to the which auowſon is appendaunt be in the kings hands by eſchete o⁊ purchaſe, and the king giueth the manno⁊ as fully and as wholly as ſuch a one held the ſame before the eſchete o⁊ purchaſe, in this caſe thauowſon paſſeth, & ſo it is agreed in 43. E. 3. f. 22. And learne ſo⁊ aſmuch as this ſtatut maketh mention but of 3. things, that is to ſay, knights fees, auowſons of churches & dowers, whether in ſuch caſe any other thing than auowſon which is appendant o⁊ appurtenant ſhould paſſe by wo⁊ds cum pertiñ without naming of it. Fo⁊ it appeareth in 18. H. 6. 12. that where a Leete was within a towne, & the king graunted the towne cum pertiñ not naming the Leet, and it was thought the Leet ſhould paſſe thereby. But the reaſon was there, becauſe it was parcell of the towne, and ỹ that is parcel o⁊ incident to another thing, paſſeth by graunt of the thing, without making mention thereof. And therefore if the king be ſeiſed of a to⁊ody, by reaſon that he is a patron of a p⁊iorie, & graunteth away the patronage without making any mention of the To⁊ody, yet the graunte ſhall haue the To⁊ody: and ſo it is iudged 26. lib. all. P. 53. and yet the kings grante of a ward ſhall not haue Gard per cauſe de gard if expreſſe mention be not made thereof, Gard. 70. H. 35. H. 6. And ſo it is if one be to haue reſtitution of the auowſon vna cum exit' and the church becommeth void, and the king makes him reſtitution with the meane iſſues & p⁊ofits take, yet he ſhall not haue this auoidance that is ſo fallen, without expreſſe mention be made therof in his reſtitution, as appeareth in P. 18. E. 3. 21. P. 24. E. 3. 29. P. 39. E. 3. 21. & P. 46. E. 3. Grant. 60. And yet if the king be ſeiſed of auowſon, and the church becommeth void, and he granteth the auowſon away, his highneſſe ſhall not now p⁊eſent no⁊ take the benefit of the auoidance, as appereth in T. 9. E. 3. 26. Therfo⁊e enquire what the reaſon is of theſe diuerſities, & what is meant by theſe wo⁊ds in the ſtatute Dotibus cum accide-

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acciderit ad ꝑdictum manerium vel terrā ptin̄. For as I suppose those words serue to none other purpose but where the king is to assigne dower, and hee granteth ouer the manor Durante minore etate, of the heire that is in ward to an other, this patente shall not haue assignement of dower if mention bee not made thereof in his patent. Howbeit learn & enquire what is the true meaning of the said words.

Le Roy auera chattels forfeits & an, iour, & waſt. Cap. 16.

ITem rex habebit ꝓia catalla felonum damnatorum & fugitiuorum vbicunq; fuerint inuēta & si ipsi habeant liberū tenementū tunc illud (tam capietur in manum dñi Regis, & rex habebit oēs exitus eiusdē p vnū annū & vnū diē, & tūtum illud vestabit & destruetur de domibus, boscis & gardinis, & alijs quibuscunq; ad ꝑdict' tenementū spectantibus, exceptis hominibus quorundā priuilegiatoꝝ inde ꝓ regē. Et postquā dñs rex habuerit annū diē, & vastū, tunc reddat tenementū illud capitali dño feodi illius nisi prius faciat finē ꝓ anō die & vasto de consuetud' tamen dicitur quod post annum & diē tī & tenementa felonū in Glot' reddent & reuertentur proximo heredi, cui debuerunt descendisse si felonia facta non fuisset. Et in Kent in Gauelkind, the father to the bough, the sonne to the plough. Ibidem omnes heredes masculi participabunt hereditatē eorum, & similiter fœminæ: sed fœminæ non participabunt cū masculis. Et mulier habebit post mortem viri medietatē ꝓ dote sua, Et si mulier fornicetur in viduitatē ꝑdet dotem suam, vel si sit desponsata viro. Before this statute Glanuil did write in this wise in his vij bookes. c. 17. fo. 59. vnder the title De vltimis heredibus. Notandum quod si quis de felonia conuictus fuerit, vel confessus in curia & de domino Rege tenuerit in capite, tunc tam terra quam omnes res mobiles suæ & catalla penes quemcūq; inueniantur, ad opus Domini Regis capiētur sine omni recuperatione alicuius heredis sui, si autem de alio quā de rege tenuerit is qui vtlagatus est vel de felo-

de felonia conuictus tunc quoque omnes res eius mobiles Regis erunt. Terra autem per vnum annum permanebit in manu domini Regis. Elapso autem anno, terra eadem ad rectum dominum scilicet ad ipsum de cuius feodo est reuertetur, veruntamen cum domorum subuersione & arborum extirpatione. Et generaliter quotiescunque aliquis aliquid fecerit vel dixerit in curia propter quod per iudicium curiæ ex heredatus fuerit, hereditas eius ad dominum feodi de quo illa tenetur tanquam Escaeta solet reuerti. Forisfactura autem filij & heredis alicuius patrem non exheredat, neque fratrem, neque alium quam se ipsum. Preterea si de furto fuerit aliquis condemnatus, res eius mobiles, & omnia catalla sua vicecomiti prouinciæ remanere solent, terram autem si quæ fuerit dominus feodi recuperabit statim non expecta-
to Anno. By this it should appeare that in Glanuils tyme, for theft onely the Sherife should haue the goods that were forfeit, and that as it should seeme to his owne vse, and not to the Kings. For her saith, the Lords in that case should receiue their escheats before the yeare, day, and the waste. Howbeit this Statut made since that time, giues all felons goods to the King without any exception. And hereupon it is to bee seene first what is comprised in this word catalla. Catalla is a generall word which comprehends as well Chattels mouable as not mouable. For Leases for terme of yeares are within this word catalla, as appeareth by Bracton in his second booke, in the title of Forfeiture of Felons, saying, Quod terminum annorum est domini Regis, vt catalla. Quia accipit terminum ad similitudinem catallorum. And therewith agreeth, the booke in M. 39. H. 6. 35. And also vnder this word catalla is take the issues and profits of lands & tenements of them that fly for felony, vntill such time as they be attainted, or acquited. And likewise of the lands and tenements of clearkes conuict, vntill such time as hee hath his purgation, I meane lands and tenements as well of their wiues right, as of

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their owne right, & so is the booke Forfeiture 16. & Corone 374. P.4. E.2. & 3. E.3. Corone 356. Also vnder this word catalla are taken the emblements ỳ were growing vpon ỳ ground at ỳ time of ỳ forfeiture of the goods firſt began to take place, as appeareth Corone 344. 3. E. 3. Also vnder this word catalla, is comprised a right of action to goods, as where goods be taken away wrongfully from the felon, M. 6. H. 7. f. 9. or where one is indebted to the felon by obligation, M. 19. H. 6. f. 47. or is accomptable to the felon for any receits or otherwiſe, and this appeareth M. 8. E. 3. f. 92. & 50. aſſ. 2. & Trauers 33. A. 32. li. aſſ. Also vnder this word catalla, is take sometimes goods wherein the felon hath no property, as if a man deliuer money out of a bagge, or corne out of a ſacke to one to keepe, which is afterwards attainted of felony, the money or corne in this caſe is forfeited. Like law is it if a theefe ỳ ſteales goods ſeuerally from ſundry persons, & afterward is attainted for one of the ſaid felonies, by this one attainder the goods ỳ are ſtolne from the other be alſo forfeited to ỳ king, A. 3. E. 3. Corone 317. 323. & 334. Like law is it if one ſteale goods, & before he be attainted thereof her killeth himſelfe, A. 3. E. 3. Corone 318. & 319. or dieth in priſon, or abiures the realm confeſſing another felony than that for ỳ which he fled to the church, in theſe caſes her forfeiteth the goods ỳ he did ſteal, Corone 379. 380. H. 12. E. 2. 3. E. 3. Corone 162. H. 8. E. 3. f. 11. M. 44. E. 3. f. 44. 26. li. aſſ. p. 32. So is if the wife kill her huſband, ſhee forfeits the goods of her huſband, Corone 423. 8. E. 2. li. Canc. Then let vs ſee further what may be ſaid vpon this word Felonium. If the offence that is committed be felony, then is it properly within the rampalle of this word Felonium, & he that commits the offence ſhalbe ſaid Felon. Notwithſtanding that he therefore ſhall not ſuffer death: as in a caſe where one killeth another ſe defendendo Coron 116. M. 16. E. 3. or by miſaduenture, Corone 302. 43. E. 3. this offence is felony, & he ỳ commits it ſhall forfeit his goods notwithſtanding ỳ her obtayne

pardon

pardon of life. For it was at the kings pleasure to graunt pardon or not. But so shall not hee that killeth one that would robbe him in his house, or the officer that killeth one that will not be rested, nor he that killeth any thing not yet borne, as a child in his mothers belly, nor the person that is straught that killeth another in his madnesse, 12. Edw. 3. Dower 183. & Forfeiture 53. For in all these cases it is not felonie. The words be further, Damnatorum & fugitiuorum. Sometimes the king shall haue his chattels, although he be not condemned of the felony: as if a man bee arrested for felony, and afterwards breakes the arrest, and the other ere he can take him againe killes him, in this case he that is killed shall forfeit his goods, and yet he was neuer attainted of thoffence. Like law is it if he bee killed in the first arrest where he would not be arrested. And this appeareth in 3. E. 3. Corone 312. & 290. Howbeit since that time there was a statute made Anno 34. E. 3. cap. 12. Which seemes to alter the law in these cases, if it be not that you will say peraduenture that he shall forfeit them, quia fugam fecit. Ideo quære, He that is felode se, shall forfeit his goods, and yet he was neuer attainted. Like law is before, of the clerke conuict. And so is it of such as stand mute H. 34. Ed. 3. Eschete P. 10. or challenge aboue the number of two enquests. Then further, this word fugitiuorum is taken such as fly or withdraw themselues for the felony that they be indited, appealed, or accused of, for that makes a great presumption against them, as Bracton saith in his second booke vnder the title Ad quæ restituatur vtlagatus, and for that presumption sake shall the vtlarie proceed, whether he be guiltie of the felony or not. And also sayeth hee in the said booke, quod vtlagati de felonia gerunt caput lupinum, & secum suum portant iudicium, ita quod sine iudicium inquisitione pereunt, quia merito sine lege pereunt, qui secundum legem viuere recusauerunt,

rūt & hoc ita si in capiend' fugiant vel se defendant. Si autē viui capti fuerint vel se reddiderint, vita illorum & mors est in manu domini Regis, & qui taliter captum interfecerit, respondebit pro eo sicut pro alio nisi sit in locis vbi cōsuetudo se habeat in contrarium, videlicet, in com̄ Hereford & Gloucest.

And in another place hee saith, Quod nullum crimen maius inobedientia, quia pro contemptu & inobedientia poterit quis excommunicari, sicut pro quolibet peccato mortali, cū omnes subditi debeant esse Regi tanquam precellenti, maxime in honestis, et ducibus eius tanquam ab eo missis, & sic cōcordat lex diuina aliquantulum cum humana. And also saith, quod vtlagatus de felonia forisfacit patriam & amicos, forisfacit quæ pacis sunt. forisfacit quę legis sunt, forisfacit quę iuris sunt, & possessionis, & forisfacit actionem ante vtlagariam sibi datam. Thus by the way haue I noted vnto you such things out of Bracton, as mee seemeth be notable, and make somewhat for this purpose: Although I need not to haue gone so farre as to Outlawrie for exposition of this word fugitiuorum, but might haue rested at the flying. For if one fly for the death of a man, and this presented before the Coroner, hee shal forfeit all his goods that he had the day of that presentment, or at any time since, till he bee acquited of the said death, Forfeiture 35. Ann̄ 3. E. 3. And notwithstanding that an enquest vpon his arraignement doth afterward acquit him, and also find that he did not fly, yet his goods remayne still forfeit, as it appeareth 22. lib. Ass. P. 96. & Forfeiture 29. & 32. M. 5. H. 4. Corone 296. 3. Edward the third. Like law is it, where one arrayned of felonie before Justices is found not guiltie of the felonie. Howbeit it is found that hee withdrew himselfe for the sayd felonie, now shall hee forfeit his goods but no profits of lands, as hee shall doe in the other case where it is found before the Coroner, For when the forfeiture shall haue no further relation,

lation, but to the day of the presentment, and not to the day of the flying, then when at the same day hee is acquited of the felony, then is the kings tytle gone as to the lands, and so consequently gone as to the issues. And this appeareth 3. Edward the third Corone 244.

Also there is another manner of flying, for the which a man shall forfeit his goods, and that is where in appeale or enditement of felony, the partie that is appealed or endyted will not appeare, but suffer the Exigent to be awarded against him, hee thereby forfeiteth his goods and the profits of his lands, which hee had the day of the Exigent awarded, or at any time hereafter. And notwithstanding that hee afterwards happen to bee acquited of the sayd felony, yet the forfeiture remaynes. For when hee tarrieth the awarding of the Exigent, it appeareth of record that he hath withdrawne hymselfe, and this you shall find in twentie two Assise 81. and fortie one Assise 3. Howbeit herein is there herebe taken heed there bee errour in the awarding of the sayd Exigent: For if there bee, hee shall then forfeyt nothing: as if the Exigent bee awarded againſt the accessorie, before it be awarded againſt the principall, or before the principall be attainted, or if an Exigent be awarded against one that hath a charter of pardon for the felony (of elder date than is the awarding of the Exigent) and hath found suertie according to the statute and the same returned into the Chauncery before the Exigent awarded: For in these cases hee shall avoyde the forfeiture upon the matter shewed, P. 43. Edward the third 43. Contrarie Law it is after the Exigent awarded the appeals doe abate for insufficiencie, or for that that hee that is Outlawed was imprisoned meane betweene the awarding of the Exigent, and the outlawry pronounced. For in that case if hee reuerse the outlawry, yet his goods remaine

maine still forfeit. Howbeit if hee were imprisoned at the time of the Exigent awarded otherwise it is, and this appeareth Forfeiture 19. H. 19. E. 3. & 31. H. 30. H. 6. Also it is to be noted, ỹ one may fly for felony, & yet hee shall forfeit nothing, as where one is arrested for suspition of felonie, and escapes, yet for this he shall not forfeit his goods, if hee were not taken with the maner, or at the suit of the partie, or endited of the same, as it appeareth 42. lib. ass. 5. Quære if he be endited afterward, whether hee shal thẽ forfeit them or not. Also an accessory after the felonie commited, shal forfeit nothing ppon a fugam fecit. Otherwise it is of accessorie before the felony committed, as it appeareth 9. H. 4. H. 7. 18. But he that withdraweth himselfe but for Petit larceny, shall forfeit his goods, as it appeareth 8. E. 2. Coron 406. Examen fre. And note for a generall rule, that the township where the goods of felons or fugitives bee found shall alwayes answere the king of them, and the shirife of the issues and profits of the lands: and therefore the townshipp may seise them for the king. For it is no plee for them to say, they were not deliuered vnto them. And this appeareth in Fitzherbert, in the title of Corone 390. 366. 300. 347. 290. 398. and 36. H. 6. 25. 22. li. ass. p. 81. H. 12. H. 4. f. 11. H. 13. H. 4. f. 13. But at what time the goods of a felon or fugitive shalbe seised, it is further to be seene, and how the attainder shal haue relation. When it is found by enquest before the coroners, quod fugam fecit, by and by the shirife shal seise his lands into the kings hands by word onely, without taking any enquest for the same purpose, and also shall seise all his goods into the kings hands, and take an enquest as well of free men as of villeines to appraise them, and cause the praise to bee enrolled to the coroners, and to deliuer them to the townshipp to make answere thereof to the king. And this appeareth 22. lib. ass. H. 96. And herewith agreeth the statute of Coro-

ners, and also Britton fo. 4. where you shall see this matter set forth more fully. And in M. 43. E. 3. 24. it is said, that the kings minister may seise the goods of a felon before attainder, and if the party find suertie, then hee to leaue them in the custody of the partie, or els in the neighbors custody. For ỳ said minister ought not to carry thẽ away with him, and. M. 7. H. 4. 47. Hul saith, that if one be endited of felony, yet till hee bee attainted his goods shall not bee removed out of his house, but in the meane time shall bee in his neighkeeping, and he to be found of the same. And in the Register there is a writ quod tenementa et bona talit̃ capta videantur, imbrevient & saluo custodiantur per ballium ipsius capti qui securitatem regi inuenient ei respondend' si &c. saluis inde ipsi capto & familie suæ necessarijs quam diu fuerit in prisona. And so is Britton folio 17. Howbeit now be the statute made in the first yere of king R. 3. ca. 3. it is ordained that none shall seise the goods of any person arrested or imprisoned before that they be attainted, or that the goods bee otherwise forfeited, vpõ pain to pay ỳ double value thereof. This statute extendeth not to any other but to such as bee in prison: For by the Statute de proditionibus 25. E. 3. ca. 14. If one be endited of felony which is not imprisoned, the Sherife at the second Cape shall seise his goods, and yet they bee not at that time forfeited. And also the statute of R. 3. doth not extend to lands, but onely to goods. Then for the relation, as for the goods it hath no relation but onely from the day that the forfeiture is presented or verdit giuen, and therefore it is said in Forfeiture 30. H. 3 3. Ed. 3. that if he sel them before he be attainted the sale is good, but for lands it hath relation to the day of the felony committed, bee it that the attainder be by verdit or vtlarie, as it appeareth M. 38. E. 3. 31. & T. 30. H. 6. fo. 5. or be it that he be attainted wout proces of law, as in the cases aboue remembred where hee is killed in the flying, as appeareth Corone 289. A. 3. E. 3. And note, that if ỳ attainder ỳ the office found of his lands be

both wꝛin the yere of the felony first cõmitted, ẏ it shall haue no relation for that yeres profits, otherwise it is if it be after ẏ yere, as appeareth in Coron 58. A.3. E.3. This book must be vnderstood as I take it where the attainder & the office be before any day of paiment wꝛin the yere. The words of this chapter be further, Et si ipsi habeāt liberū teñtū tunc illud statim capietur in manū dñi regis & rex habebit ōnes exitus eiusdē per vnū annū & vnū diē & teñtū illud vastabitur & destruetur de domibus boscis & gardinis & alijs quibuscunq; ad prędictum teñtū spectātibus. It should appeare by Glanuil in the beginning of this chapter, that the cõmon law was as much before the making hereof in all cases of felony sauing for theft, in which the king had no yeare & day. Howbeit after Glanuils time the Statute of Magna charta was made, which saith in the 22. chapter thereof, Nos non tenebimus terras illorum qui conuicti fuerint de felonia nisi per vnū annū & vnum diem & tunc reddātur terre ille dñis feodorum. By this it should seeme this statut doth remit the wast, because it speaketh nothing of it, or els peraduenture you will say that this word Nisi argues and proues ẏ the King before the statut of Magna charta might haue holden it as long as he would, but to the contrary of that exposition is Glanuil, as appeareth before: And also Bracton which wrote somewhat after his time: For by Bracton in his second booke it appeareth ẏ before the making of the sayd Statute of Magna Charta the king had nothing els but the wast, & to thentent he should remit the wast, the yeare & day was afterward giuen to the king: For these bee his words in the title of Vtlary. Si vero terrā liberam habuerint vtlagati, statim annum, & vnum diem, ad capitales dominos post terminum illum reuersura si de alio tenuerit quam de rege, si autem de rege tunc erit Escaeta ipsius regis, & hoc verum est quod per talem terminum remanebit in manu Domini Regis nisi ipse capitalis dominus vel alius finem fecerit pro termino regi habendo sed quæ sit causa quare terra remanebit

bit in manu domini regis, videtur quod talis eſt, quia reuera cū quis fuerit conuictus de aliqua felonia in poteſtate dñi Regis erit proſternandi edificia, extirpandi gardina, & arādi prata & quoniā huiuſmodi vrgebantur in graue damnū dñorum, pro cōmuni vtilitate prouiſum fuit quod hūiuſmodi dura & grauia remanerent, & quod dñs rex propter hoc haberet cōmoditatem totius tre illius p vnum annum & vnum diem, & ſic omnia cū integritate reuerterētur in manus capitalū dñoꝝ nunc autē petitur vtrū, s. Finis pro termino & ſimiliter ,p vaſto. Et nō video rationē quare, niſi quod terminus bene poterit eſſe per ſe ſine vaſto eo quod fugitiuus & vtlagatus non ſolum delinquit erga eum qui ſequitur & appellat, ſed erga regem cuius pacē infringit contra fidē ſuā cui tenetur, quia quilibet cum faciat ſacramentum, iurat ſalua fide domini Regis. Thus our authors agree not vpon this yere & day, for Bract. is contrary to Glanuil ỳ wrote before him. Howbeit Britton which was likewiſe before the making of this ſtatut of progatiua agreeth with Bracton, as it appeareth in the booke fol. 14. adding further, ỳ the king ſhall not haue the yeare & day of land ỳ is holden only for terme of life or yeres, or by freth diſſeiſin, or in fee terme, or in morgage. And ſo is Bracton alſo therewith agreeing in the ſecond book, but now ſince his time this ſtatute of prerogatiua was made, which giues the king, as you may perceiue, both the yeare, day, & waſt. And fleta ſaith, quod rex habebit omnes exitus eiuſdē per vnum annū, & vnū diē. By this it ſhould appere ỳ the king ſhould not haue the iſſues of the land, but by a yere & a day, but yet it is cleere ỳ he ſhal haue the iſſues alſo frō ỳ time of the felony done, vntil the time his highnes hath had the yere, day, & waſt, & not the lord (allowing that that is to be allowed for finding of the priſoner) for it cannot bee intended that the lord ſhould haue the mean profits, becauſe the land ſhall be deliuered vnto him without profit, that is to ſay, waſted & deſtroyed. And therewith agreeth the booke in Coron 290. A. 3. E. 3. & P. 49. E. 3. f. 11. And there it appeareth that if an office bee found 20. yeres after the attainder the king ſhalbe

haue the profits from the time of the felony cõmitted vntill the yeare and day next after the office found. For though the lord be intitled to haue theschete, yet the kings title for the yere, day, and waſt, goeth before the lords: For ẏ words bee, Poſtquam dominus Rex habuerit annum diem & vaſtum tunc reddatur tenementum illud capitali domino. Alſo by this word Reddatur it ſæmes the Lord cannot enter into his eſchete after office found, but is driuen to ſue an ouſter le main for the ſame out of the kings hands, as it appeareth in Trauers 48.A.8.E.2. but if a ſtraunger abate before office, the lord ſhall haue a writ of eſchete againſt him, & recouer, yet that notwithſtanding when an office ſhal be foũd afterward the king may ſeiſe for the yere, day, & waſt, and ſhalbe aunſwered of the meſne profits, like as it is when the kings tenant in chiefe dyeth, his heire of full age an eſtraunger abateth, the heire may haue aſſiſe of Mortdaũceſter if he will, & recouer againſt the abator, & yet vpon an office found afterward the king ſhal ſeiſe for primer ſeiſin and bee aunſwered of all the meſnẽ profits, and the heyre driuen to ſue liuery. Further then let vs ſee in what caſes the King ſhal haue annum, diem & vaſtum, and in what not. The king ſhal not haue annũ, diem, & vaſtũ, of clerks cõuict after verdit, becauſe he forfeits no land, Coron 332.A.3.E.3. Like law is it of lands in Gauelkind where ẏ father is hãged, but otherwiſe it is if he bee outlawed or abiured for felony for there the king ſhall haue the yere, day, & waſt, and this appeareth in Preſcription P.50.A.8.E.2. If ẏ huſbãd be attainted of felony the king ſhal haue ẏ yere, day, & waſt, of the lands of ẏ wife, & yet in ẏ caſe ẏ lords ſhal not haue their eſchetes. But what thẽ? ẏ husband might haue done waſt, & the wife had had no remedy for the ſame, and by the ſame reaſon the king may do as much, & this appereth in Corone P.327.A.3.E.3. And alſo in Bracton in his ſecõd booke. And alſo it ſhould there appeare, ẏ the wife is driuen to ſue an ouſter le main after the death of her huſband. If one be arreſ-

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ted for felony, & breakes the arrest, so ỹ in the pursuit of him he is killed, because he would not otherwise bee taken, the king in this case shall haue the vere, day, and wast, as it appeareth Corone 312 & 290. A. 3. E. 3. If a man commit felony, & hath his charter of pardon, yet the king shall haue the vere, day, & wast, & the lords their escheats, & this appeareth Coron 308. A. 3. E. 3. for the pardon doth not restore him but to the law. For though ỹ king would pardō him with words of restitutiō, yet his grace could not therby restore him to the lands holden of other. And note, that the king shall haue the vere, day, & wast, of lands in auntiēt demeine, if it so be that the tenant might haue sold the said lands against the will of the lord, as appeareth Coron 310. A. 3. E. 3. & that notwithstanding that the said lands were alwaies vsed to besurrendred by the rod, & to passe by surrender. The words of ỹ statute be further, Exceptis hominibus quorundam priuilegiatorum inde per Regem. That is as much to say, except such as haue bona & catalla felonum by the kings graunt: for a man cannot prescribe to haue bona & catalla felonum, as appeareth L. 46. E. 3. f. 16. P. 1. H. 7. f. 23. H. 8. H. 4. f. 2. For none may haue this prerogatiue of vere, day, & wast, but only the king, although he would claime it by charter from the king, or otherwise, as it appeareth Coron 310. A. 3. E. 3. But when the king is seised of it, he may commit it ouer, as appeareth by Bracton in the said 2. booke. But if the land whereof the king should haue the vere, day, and wast, be vnder the yerely value of iij. s. iij. d. it is vsed to bee remitted for the smalnes and simplenes of the thing, as appeareth Corone 327. A. 3. E. 3. for it should cost more the suing of it out of the kings hands than the thing is worth. And note the custome of Glouc' comprised in this statute, whereby it should appeare, that notwithstanding any such custome, yet the king should haue annum & diem. But not so of lands in Gauelkind, as I haue said before.

Diuers other Prerogatiues there bee, which the King hath by the order of the common Law, that be not within this Statute cõpriſed, a great part whereof vnder the title of Prerogatiue Maiſter *Fitzherbert* hath moſt diligently noted in his great Abridgement, and ſo well placed there, that I do of purpoſe omit to rehearſe them here. The reſt would require ſo long a ſearch, that vnleſſe I had gathered and noted them already (as I haue not done indeed) I ſhould be faine to purſue the whole body of the common Lawes for the knowledge thereof, whereunto time ſerueth mee not, wherefore at this time mine intent is not to meddle with them.

¶ Proces to be ſued after the death of the Kings tenant in chiefe.

Cap. 17.

By a Statute made in the 33. yeare of the late King of moſt famous memorie H. the 8. the 22. cap. It is ordayned and prouided among other thinges, that no perſon or perſons hauing lands or tenements aboue the yerely value of fiue pōūds ſhall haue or ſue any Liuery before Inquiſition or office found before the Eſchetor or other Commiſſioner or Commiſſioners, by virtue of the kinges writ or commiſſion to be directed out of the kings Chancerie or other Courts, hauing authoritie to make ſuch writs or commiſſions for ſauing of liueries, which writs or Commiſſions ſhal not paſſe out of the Chancery, nor any other Courts, but by a warrant or bill to be aſſigned & ſubſcribed with the hands & nailes of the Maiſter of the Kings wards and liueries, Surueior of his liueries, or the Attorney & receiuor of the Court of Wardes & Liueries, or three, two, or one of them, to be directed & deliuered to the Chauncelor of England, or to any other Chācelor or officer hauing power to award ſuch writs. And if the lands or tenements wherof any inquiſition is to be had by virtue of any ſuch writ or cōmiſſion extende the yerely value of x.li. that then ſuch as ſue for ſuch writs & cōmiſſions ſhal pay for the ſeale & writing therof ſuch fee as hath bin accuſtomed. And if the ſaid lands & tenemēts wherof any ſuch inquiſitions & offices are to be found by virtue of any ſuch writ or commiſſion extende not the ſaid yerelye value of x. li. then ſuch as ſhall ſue for ſuch writs or commiſſions ſhal pay for the ſeale of euery of them vj. s. & for the writing vj. s. & not aboue. This Statute doth

not set forth the name of the writ or commission that shalbe sued, howbeit these words that follow, that is to say, (for suing of liueries) doe somewhat open the minds of the makers of this statute, & declare that their meaning was of the Dē clausit, & such other writs or commissiōs as serue for the purpose, and not of euery writ or commission, for so might an office be found by a wrong writ or commission, which should want matter, or be otherwise insufficient to make liueries. But learne & inquire, if after a good writ or commission sued forth, the office that is found is not sufficient, whether the party shal haue his liuery or not, without suing a Melius inquirendum, or a new office, because that some peraduenture will say that the words of the statute be performed, that is to wit, an office or inquisition is found. But to that it may be answered and said, that it is no office when it is insufficient at least wise toward the party that should sue liuerie thereupon, although it be a good office toward the king, if any thing therein contained be for his benefit. And learn also if the kings tenant dye seised of lands in diuers counties, whether by force of this statute he shall haue an inquisition or office to be found in euery County where the lands lye, for so it is vsed to be done vpon all generall liueries, & he that sueth his generall liuery otherwise, misshueth the same, & is an intruder vpon the kings possession, howbeit peraduentures you will say, that if the lands exceed the yerely value of xx. Marks, he must sue a speciall liuery, & not a generall, & therefore it makes no matter for the inquisition or office, & that the words of the statute will beare it well ynough if there be but one office found. But as to that it may be sayd, that the meaning of the statute was not so, for the king can neuer be fully informed of his title, vnlesse there be an office found in euery shire, and also by finding of seuerall offices, one record may be better for the king than another, whereof his grace may take aduantage, for the best shall be taken for the king. Thus it appeareth by statute, how that of lands

lands aboue the yearely value of v. li. inquiſition muſt bee made, & an office found after the death of the Kings tenaunt before liuery can be had: and that muſt be by a writ of Diem clauſit extremum for that is the propper writ that is to bee ſued for that purpoſe, if any ſuit be made within the yere after the kings tenants death, or a ſpeciall commiſſion in the nature of the writ of Diem clauſit. For vpon a general commiſſion to inquire generally of all wards, no particuler perſon can haue liuery. And if he tarry till after the yere, then he cannot purſue any of theſe, but for his remedy muſt ſue a writ called Mandamus, or a commiſſion in nature of that writ, and thereupon to cauſe an office to be found, and ſo to haue liuery: But if an office be once found by Diem clauſit, and the heire dieth in the Kings ward, his heire muſt ſue Deuenerunt, and no Mandamus, although it be after the yeare of the death of him that dyed in ward, and ſo is the rule in the Regiſter. Sometimes it happeneth that after deliuerie of the writ of commiſſion, and before office found, the eſchetor dieth, or is removed from his office, in which caſe then the proces that is awarded to his ſucceſſor, is a writ called Datur nobis intelligi: but if office bee found before his death or removing, which office is not returned, then ſhall there be a Certiorare awarded to his executors to returne the ſame. For it is a matter of Record as ſoone as the Iurors haue put their ſeale vnto it, notwithſtanding it be not returned. And note that the awarding of this writ of Diem clauſit, or ſpeciall commiſſion is peremptorie to him that ſueth for it. For if hee leaſe it, or bee taken from him with force, hee gets no more writs or commiſſions for the lands in the countie. And this appeareth in the new Natura breuium folio 253.c. Howbeit P. 14. E. 4. fol. 5. it is touched by the way, that in ſuch caſes hee ſhould haue a new writ, Ideo quære. But after office once found by a Diem clauſit, or ſpeciall commiſſion, as well the king and party thereby are bound as euery other ſtranger for ſo much lands as are compriſed within the office,

office, and neither the king ne the partie, nor any other shall haue any mo writs or commissions to inquire any further of these lands, except it be in such cases as I shall hereafter recite, for so the law should neuer haue end, but new heires might be found euery day by office which were inconuenient, and the king should not know to whom to make liuery, and this appeareth Y. 14. E. 4. 5. and Y. 2. Y. 7. f. 12. Y. 4. Y. 4. fo. 15. But where after office found it is surmised for the king, that his highnes hath a better title, then was found for him by the first office, whether the matter surmised may stand with the matter found by the first office or not, yea, although it be more contrariant or repugnaunt, it is not materiall: but in such cases a new writ or commission shall bee awarded. As take the case to be this: By the first office it is found the Kings tenaunts in chiefe dyed seised his heire within age, where in deede he died without heire, so that thereby the lands ought to haue escheted to the King. Or that he was tenant in taile, and died without issue of his bodie whereby the lands ought to haue reuerted vnto the king, in these cases the Court shall award a new writ or commission for the king. Like law is it where the daughter is found heire by office, and afterward the son is borne. Or where there is but one daughter found heire by office, where there ought to haue bin two found heires. Or if by the first office one is found heire of full age, which is not heire indeed, but another is heire which is within age: In all these cases there shall be a new writ or commission awarded, causa qua supra, as it may appeare Liuery 28. T. 12. H. 2. Y. 14. E. 4. f. 5. & Y. 4. Y. 7. fo. 6. & 30. lib. ass. 28. yea and a more straunger case, as it should appeare in the new Natura brevium fol. 261. & 262. that is to say, where the king was to haue no benefit at all, more then hee had by the first office, and yet a new commission was awarded, and therefore the case was there: the second brother was found heire by the first office, and of full age, now the eldest had a commission being also of full age,

to

to finde him heire, and thereupon had his liuerie. So is it where two be found daughters and heires to one man of certaine lands, where indéd parcell of the said land was giuen to one of the said two daughters in franke mariage, now she that claimed the franke mariage had a speciall cõmission to inquire of the same: and yet by the second office the king had no benefit, Ideo quære. For this Natura breuiũ seemeth to impugne the bookes before rehearsed. And like as hée may pray a new writ or commission in the cases aboue rehersed before liuery had, euen so may hée doe in the like cases after liuery, if the liuery be a generall liuery, and thereupon as sone as the title is found, the king shall reseise, but not without a Scire facias, because the Statute made at Lincolne hath so prouided, as I shall open more fully when I come to that place, and that in all these aforesaid cases a new Diem clausit may be as well awarded, as a new commission, as it appeareth Anno 29. li. All. P. 30.

¶ What thing shall be in the King without office or seisure, and what not, and whereby an office onely without any seisure or other proces the king shal bee in possession, and where not, & where he shal bee in possession without an office, but not before a seisure and how the King may bee intituled by any other record, as wel as by an office, and where a man may enter as wel vpon the Kings possession, as any other. Cap. xvij.

By a statute made the 33. yeare of the late king of famous memory H. 8. the 20. chapter, it is amongst other things prouided, that if any person or persons shall be attainted of high Treason by the course of the common lawes or Statutes of this Realme, that in euery such case, euery such attainder by the common law shall be of good strength, value, fauer & effect, as if it had bin done by authoritie of Parliament

ment. And the Kings Maiestie, his heires and successors shal haue as much benefit and aduantage by such attainder, as well of vses, rights, entries, conditions, possessions, reuersions, remainders, and all other things, as if it had bene done and declared by authoritie of Parliament, and shall bee deemed and adiudged in actuall and reall possession of the lands, tenements, hereditaments, vses, goods, cattels, and all other things of the offenders so attainted, which his highnes ought lawfully to haue, and which they so being attainted ought or might lawfully lose and forfait, if the attainder had bin done by authoritie of Parliament without any office or inquisition to be found of the same, any Law, statute, or vse of the Realme to the contrary thereof in any wise notwithstanding. This Statute makes it clere & without question, that in cases of high Treason, the Lands of him that is attainted are in the King by and by without any office. But for other attainder it remaines as it was at the common law, & therefore learne if one which holdeth of the King be attainted of petit treason or felony, whether in this case by the attainder his lands bee in the king without office, And mee seemeth by attainder & death together they should be in the king in law howbeit not in deede, vntill such time his highnes seise them by his officer, or that an office be thereof found: for by the attainder the lands are forfaited to the king by matter of Record, and then when the partie dieth, either the freehold must bee in suspence, or els adiudged in the king in law, For he that was seised hath corrupted his blod, and is dead without heire, and therefore his highnes is become owner thereof in law, and a possession in law vested in him of the same landes, which his highnes at his will and pleasure may make a possession indeed, as sone as he will take vpon him knowledge of the said lands, and seise them by his officer. And therefore the booke is agreed M. 20. E. 4. f. 11. that if he that is attainted be seised of aduowsons appendant, as sone as ỳ church becometh void, the king may present wout any office

which

which proues that the king by that tainder was patrō before any office found, or els how could his highnes present? I see no difference betweene lands & auowsons in this case, for a auowson is not trāsitory toward the king, but ỳ he may take the presentment therof at all times when he will, quia nullum tēpus ei occurrit. Howbeit learne what the law will in this case, for many men are of the contrary opinion. And see in the booke M.4.E.4.22. cōcerning this matter. And so note what is said of a possession in law, for as I take it, there may be a possession in law in the king aswel as a possession indeed, which possessiō in law is euer wout office or any other matter of record, as when ỳ possession is cast vpon his highnes by a discent, reuerter, remainder or eschet, or in title of his seignory or prerogatiue, as for ward ship, primer seisin, or for the custody of the temporalties of a bishop during the time ỳ the See is vacant: in all these cases without any office or other matter of record, there is a possessiō in law vested in ỳ kings highnes, ỳ is to say, for that that doth discēd, reuert, remain or eschete, ỳ freehold is cast vpon him in law as it should be vpon a cōmon person in ỳ like case, or els the freehold should be in suspence, which may not be, T.9.H.7.2.& 9.P.49.E.3.f. 16.& Estopple 255. M.4.E.2.& of the rest, the possession in law of a cattel is in his highnes in right of his seignory, which his highnes at his wil & pleasure may make a possessiō indeed by entry or seisure, H.21.H.7.f.7. M.20.E.4.f.11.& 14.& P.21.E.4.f.1. T.24.E.3.f.54. M.10.H.4.f.3. but not to make it a possessiō in deed by his graunt, because there is a statut made in ỳ 31 yeere of H.6.c.6. to ỳ let therof, which prouideth ỳ al letters patents made of lands & tenemēts before office found & returned, or cōm one month after, but only to him ỳ tendeth his trauers shal be void. This statut extends only to lāds & tenemēts, therfore of ỳ body of his ward his highnes may make a grant notwithstanding this statut as me seemeth, for that is neither lād ne tenemēt: also notwithstanding that this statut doth restrain the granting of the lands

and

and tenements, yet the seisin therof remains & is in the king as it was by order of the cõmõ law which is as I said before in his highnes in law although not in deed, vntill such time as he hath made a seisin or an entre by his escheto⁹, or a grãt therof, which waieth both to a seisure & grant, in such cases where the grant may be good & not restrained by statut vntill such time as an office thereof be found: For an office ỹ entitleth the king to the possion is sufficient by it selfe without any seiser or entre of the escheto⁹ to make a possession in deed in the king, if it bee so that the possession were vacant when the office was found. But if the possession were not vacant, but another than hee in whose right the king seiseth was tenaunt thereof at the time of the finding of the office, then must the king enter or seise by his office before the possession indeed shall be iudged in him: P.14.H.7.fol. 21.15.H.7.f.6.20.E.4.f.11.& 14.& P.21.E.4.f.1. yea and if his highnes seise not by the space of a yeare & a day after the finding of the office, then may hee not seise without a Scire facias to be pursued against him that is tenaunt therof. And of this matter you may see bookes. 29 ass. 30. 32. ass. Trauers. 32. 50. ass. 2. & Gard. 105. M. 6 R. 2. But hereupon is there a distinction to be made, whether that the king is entitled vnto by office be it a thing manuel and whereof profit may be taken forthwith after the finding of the office or not. For if it bee such a thing as is not manuel & whereof there is no profit to be taken forthwith vntill such time it falleth, in that case although the king be in possession of the right of the thing, yet is hee not in possession of the profit thereof vntill such time as his highnesse actually by his officer when it falleth taketh and perceiueth the said profit, as for example. The thing the king is entitled vnto by office is no land but auowson, rent or a common, although that the king by his office bee patron of thauowson or owner of the rent or common, and thereby when the benefice becommeth void may present, or when the rent day

commeth

commeth may receiue the rent, or when ỹ cõmon is to be taken may vſe the ſaid common, yet if the office that entitleth his highnes be falſe, & he that was in poſſeſſion at the time of the office taketh the profit when it falleth before the kings officer do take it, in this caſe this taking is no entruſion vpõ the kings poſſeſſions, for he was neuer ſeiſed indeed: wherefore being driuen to his action if his highnes bring his Quare impedit or action of treſpas, the defendant may trauerſe the office wᵗ him in the ſaid actions keping ſtill his poſſeſſion, & need not to ſue in the chancery for the trauerſing of the ſame. This may you ſee a differẽce betweene a thing that is manuel & a thing not manuel, & what the reaſon therof ſhould bee learne, for as I ſuppoſe the reaſon of it is no other but as I ſaid before, that when a ſtranger is tenant at time of the office finding the office maketh no poſſeſſion indeed in the king before an entry or ſeiſer. And thẽ when the kings officer taketh not the profits when it falleth, but ſuffereth him ỹ was in poſſeſſion to take it, then was the king neuer ſeiſed, but he ſtil remaines in poſſeſſion that was poſſeſſed at the time of ỹ finding of the office vntil ſuch time as ſeiſer bee made for the king, which cannot be done at all times as it may bee of land, but only at ſuch times as the profit therof to be taken, that is to ſay, when it falleth, and that is now paſt for this time ſeeing it is alreadie taken: and therfore the king in that caſe is driuen to his action. But quere whether his highnes may bee brought in poſſeſſion in thoſe caſes by a claime or not: And theſe caſes may you ſee in the bookes of H.17.E.3. f.10.P.21.E.4.f.1.P.5.E.4.f.3.H.4.E.3.f.1.& P.14.H.7.f. 21. Like law is it where an office is found which doth not entitle the king to the poſſeſſion by entry but only by action, as where it is found that the kings tenant for terme of life or yeres hath done waſt P.14.H.7.f.23.& 25. or being his tenaunt in fee ſimple hath ceſſed by ii. yeres P.15. H.7.f.6. or made a feffemẽt by colluſiõ cõtrary toỹ ſta. of Mar. T.12.H. 7.f.1.& 19.& H.21.H.7.f.18. or ſuch like. For it is a generall

neral rule yin all cases where a cõmon person cannot enter but is driuen to his action, there the king cannot haue the possession but by like action, or els by a Scire facias after office found in nature of the action, for the office in the case entitleth the king to no other thing but onely to the action, as appeareth in H.21.H.7.f.18. But quere of a feffement that is found to bee made by collusion contrary to the statut A. 34. & 35.H.8.c.5. for in that case it seemes his highnes may enter without Scire facias because the said statute appoints no action to bee sued in the case. And note that in all these cases before where the king is driuen to his Scire facias or other action if the office bee false, the party may trauerse the office with the king, keeping still his possession whether it bee in the Chancery or any other court, and need not to sue any Ouster le maine if it be found for him, because hee was neuer out of possession. Then further let vs see in what cases the king cannot be entitled but onely by office or other matter of record, and in what cases hee may, howbeit not to haue any possession either in deed or in law vntil the time there be a seasure made. And as to that, note that in all cases where a common person cannot haue a possession neither in deede nor in law without an entry, there the king cannot haue it without an office or such like matter or record, as where the king hath title to enter for a mortmain or for a cõdicion broken, in this case the king can haue no title vntill such time as the said mortmain T.9.H.7.f.2. or condicion broken M. 2. H.7.f.8. be found by office or by some other record, as it appereth P.15.H.7.6. So it is in diuers other cases concerning the kings prerogatiue, as in the case of Idcots, of lunatikes which haue lands or tenements, or when his highnes is to be entitled for ānū, diē & vastū of persons attainted P.49.E. 3.12. or for alienation without licence or to seise the temporalties of a bishop for a cõtempt 21.E.3.3.29.30.& H.21.H. 7.7. in all those cases his title must be found by office or otherwise appeare of record for these rights his highnes hath only

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as king. But if his Highnes haue cause to seise the lands of his widow that hath maried her selfe without licence, his highnes may seise, notwithstãding there be no office found of her Mariage, as it appeareth in the new *Natura brevium fol.*174. Learne what should be the reason therof, more than in ỳ case of alienation before. Like law hath bẽ vsed where his highnes is to seise lãds of priors alies within this realm, ratione guerre, his highnes doth it without any office, for in both these cases, ỳ kings title is notorious ynough, although it appeare not of record. But yet in those cases his highnes must seise ere he can haue any interest in the lands, because they be penall toward ỳ party, & of these cases you shall find bookes. H.21.H.7.fo.7. H.14.H.4.f.36.H.22.E.4.fo.44. Other prerogatiues ỳ king hath which extend only to personall & transitory things, *ad bona & catalla felonum, wreke de mere, tresour troue*, or the profits of lands of clerks conuict of felony, or of persons outlawed in a personall action, to these things it seemes the king is intitled, although there be no office or other matter of record found of them, as it should appeare. H.11.H.4.f.41. H.21.H.7.fo.7.et 27.li.ass.P.50. And note ỳ if the kings title appere any way of record, it is as good as if it were found by office. Therefore if the kinges tenãt alien without licence which alienation appeareth by fine or other matter of record, in this case if there be another record found ỳ proueth the lands to be holden of the king in capite, vpon these y. records together proces shalbe made against the party by *Scire fac.* to come & shew why he should not make a fine for the alienation 50.li.ass.2. Like law it is where there is a record to proue that he ỳ alieneth is but tenant in taile of the kings gift, and he pretending to bee tenant in fee simple, doth purchase a licence of alienation and alieneth & after dyeth without issue, which death is found by office, but nothing of this state taile or licence appeareth in the said office, yet vpon al these records laid together, the

king shall haue a *Scire facias* against the alienée, to show why the land should not be seised into his hands, and his Highnesse answered of the profits since the death of the tenant in taile, for when he was but tenant in taile, it appeareth that the licence was purchased vpon a false suggestion, and so voide, & then the lands ought to reuert to the king, because his reuersion could not be discontinued. And this may you see 40. Li. Ass. 30. Then last of all it is to be seene whether the possession may be taken from the king by entry or not. And as to that, if the kings possession be by matter of record, no person can disseise him, or take the possession from him: for like as the king cannot take by gift from any person, but by matter of record, no more may the possession depart from him, but by matter of record, and therefore his Highnesse cannot haue Assise, or *Ejectione firmæ siue custodiæ*, like as a common person may: but his Highnesse may haue a writ of Rauishment of *Gard*, *vt patet Gard* 3. E. 47. E. 3. yea, & though the entrie be not immediatly vpon him, but vpon his committee, or fermer, yet it is no disseisin to his highnes, as it appeareth aũ 4. H. 7. 1. M. 2. H. 4. 7. M. 14. E. 4. fo. 2. and *Suggestion* 9. M. 35. H. 6. By the which said booke of 35. it also appeareth, that if the king, or his committee bee cast out of the wardship of the lands, that the remedy is in this maner, that is to say, vpon a suggestion therof made in the Chancery, there shalbe awarded a writ called *Amoueas manum*, and that vpon a certeine paine, which writ may be awarded onely vpon his suggestion without any presentment or enquiry, and this writ may be graunted to the committee, as well before possession had of the ward, as after, for when the king was once possessed by office, and graunts it ouer, yet this possession still remaines, for the king abideth stil garden, notwithstanding any such grant: And therefore this writ of *Amoueas sub pena* lieth for the graunter or committee, although the grant be, absque aliquo

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inde reddendo. And if vpon this writ of *Anoient*, the defendant doe not restore the thing, then shall goe out against him an Attachement, vpon which writ the defendaunt may appeare and shew his title, which if it bee found against him, hee shall then make restitution by iudgement, and pay a fine, and aunswer the meane issues and profites. Thus doth it appeare, that the king cannot bee disseised, or ejected, if his Highnesse bee once seised by matter of record. Otherwise it is, before his seisin be by matter of record, for if before office a stranger enter by title, or without title, this is no intrusion vpon the kings possession, but in this case the heire may haue *Assise de mortdaunceſter* against the straunger, if hee will, which proues, that by his entrie hee hath gotten both a freehold, and a fee simple. But as soone as the office is found, and the Escheatour entreth, this possession of the straunger which entreth without title, is clerely vndone, and the freehold and the fee simple reuested in the heire. But if the entrie of the straunger were by title, and afterward office is found and the king seiseth, whether then it bee so or no learne. And it should seeme to bee all one, or else the kings seisure is not good, for how can the king seise in an other bodyes right, if the right were taken away before by an entrie: therefore it should seeme eyther his Highnesse hath no title in that case to seise, or else by his seisure, the freehold and the fee simple must reuest in the heire. But note, that if the Kinge will by colour of a Record seise an other mans land, which Record gyues hym no title in deede, notwythstanding any such seisure, yet hee that hath right may enter vpon the king, and by hys entrie reuest againe in hymselfe, both the freehold, and fee simple, as were it is found the kings tenaunt dyed seised but of an estate for terme of life, the reuersion to an other, and this notwythstan-

ding the king leiseth, in this case if hée in the reuersion enter vpon the king, this is a good entrie: and therefore the case was, hée made a feoffement after his entrie, and it was thought to bée a good feoffement. Like law is it where the king is intitled but only to the profits, as vpon an vtlagary in a personall action, or vpon the conuiction of a clerke, in these cases if the partie enter and make a feoffement, or if a straunger that hath title to entre, do entre, hée dischargeth the king of his interest, and of these matters, you shall find bookes M. 8. H. 4. folio 16. H. 21. E. 3. folio 1. H. 3. H. 7. fo. 2. H. 10. E. 3. fo. 2. 27. ass. pl. 50. T. 9. H. 6. fol. 2. & H. 21. H. 7. fo. 7.

Enterpleder. Cap. 19.

SOmetime it happeneth that by two seuerall offices found in one Countie, seuerall persons bée seuerallie found heires to on man, whereby for asmuch as the king is brought in doubt to which of them his highnesse may make Liuery, they therefore must first enterpleade, and when by enterpleader the priuitie of the blood is tried betweene them, then his highnesse ought to make the Liuerie to him that is tried to bée the next heire of him that dyed. As for example, by one *Diem clausit*, or speciall Commission in one Countie, one is found heire to him that dyed the kings tenaunt, and of full age, and by an other *Diem clausit*, or speciall Commission in the same Countie, one other is found heire also to him that died and wythin age, in this case the heire that was first found shall haue a *Scire facias* in the Chauncerie against hym or her that was last found heire, to come and shew why Liuerie should not be made vnto him of the land compriſed in

him of the land comprised in ỹ *Scire facias*, as heire to him ỹ last died seised thereof, vpon which writ if a *Scire feci* bee returned, & the party defendant commeth not, or if he come and confesse that hee himselfe is not heire, then the plaintife in the *Scire facias* shall haue his liuery, but if hee come and entitle him by the secõd office, & trauerse ỹ first, as he needes must (for then enterpleader must needes rest vpon the first office, & not vpon the second) then as thissue is found, so shall hee or they for whom it is found, haue liuery. And this appeareth in the new *Natura brevium folio* 262. & P. 16. E. 4. fo. 4. Trauers. 44. P. 36. E 3. Howbeit a great doubt riseth in our bookes vpon this matter, whether thẽterpleader shalbe forthwith after the second office found, or not, vntill such time as the heire that is found within age commeth to his age, and as it appeareth by the said booke of 36. E. 3. in this case, where one was first found of full age, and after the other within age: then enterpleader was forthwith, for it were no reason that he that was right heire, and of full age, should be delaied by the nonage of the other that is no heire. And a straunger shal be receiued to trauerse the office, notwithstanding the heire that is found by the office, that is trauersed be within age. And then it is no reason that the heire in this case be in worse condition than a straunger. But take it by the first office, one is found heire, and within age, and by the second office, an other is found heire, and of ful age, whether in this case they shall enterpleade or not, or whether thenterpleader shalbe before thage of the other. And surely it should seeme by the grounds and rules declared before vpon the writ of *Diem clausit extremum*, that the second office in this last case is void, because there is no better title found for the king than was by the first, and then if it be void, there can bee no enterpleader. Howbeit in the new *Natura brevium fol.* 262. it appeareth to the contrarie hereof and that they shall enterpleade in this case, and that

the second office is not voide, for there the heires found by both offices were of full age. And yet that notwithstanding they enterpleaded. And so is T. 5. E. 4. f. 4. where it is said, that if by one office the heire is found within age, and by an other office an other is found heire, and of full age, that in this case they shall enterpleade, but note before the childe come to his full age. And *Townsend* Justice saith, in P. 1. H. 7. fol. 14. That if by diuers offices, ij. bée seuerally found heires, and within age, now the king shall kéepe the lands till their full ages, and then they shall enterplead, and if they die before enterpleader, their heires within age, seuerall *Deuenerunt* shall bée awarded, that is to say, for euery heire one, and by the same being found seuerally heires to their auncestors, they shall enterplead at their full ages, like as their auncestors should haue doone if they had liued, and if the dying of any of them were without issue, and the other found to be his heire, then is thenterpleader determined. Thus may ye sée how bookes vary in this matter, and yet by the way note this difference, that is to say, where by the first office the heire is found within age, and where of full age, for by these bookes it should séeme, that if hée bée first found within age, notwithstanding that by an other office, an other is found heire, and of full age, yet hée shall not enterpleade with the other, till hée bée of age: Contrary it is if the first bée found of full age, and the next within age, and the reason may bée for that the king is first seised of him that is within age, with whom the law weies more in presumption to bée heire, then with the other, and this title is the best title the king hath, for it entitleth his highnesse to a greater benefite then doeth the second office, and this second office was found vpon a commission graunted more for the kings benefite, than for the heires that should bée found by the same, and therefore it were reason that hée that is first found heire, haue more

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fauour, if any fauour bee to bee shewed, than he that was last found heire, or at the least for the kings benefite, that the matter be respited till the childe bee of age. Also the said Justice *Town-send* saith further, P. 1. H. 7. fol. 14. that if one be found heire in one Countie, and an other found heire in an other Countie, yet they shall enterplead, which cannot be, as mee seemeth, H. 2. H. 7. fol. 12. for once wee haue a generall ground, that a man cannot sue a generall Liuerie by parcels, but first he must cause an office to bee found in euery Shire where he hath lands, & when all the offices be returned, then to haue his Liuerie, and not before: then in this case where one is found heire in one Shire, & an other in an other Shire, here none of them both can haue Liuery, because hee hath no office found, but in one Shire, and not in the other: and then if there can bee no Liuerie, there can be no enterpleader, wherefore it should seeme in that case they cannot enterplead. And herewith agreeth the booke in P. 8. H. 7. fo. 11. So no enterpleader can bee, but where there is an office thorough the whole found for euery heire in euery County where the lands lye, P. 16. E. 4. f. 4. But it is not alway requisite that there be seuerall offices found, for sometimes vpon one office found by it selfe alone, there may bee an enterpleader, & that is where two be found heires by one enquest, as two twines, that is to say, two children borne at a burden T. 1. H. 7. 28. And it is to bee noted, that euery enterpleader is to trie the priuitie of blod only, that is to saie, which of these that enterpleade is next heire to him that last dyed seisied, and not to trye their rights in the landes. And therefore if by one office one bee found heire of a generall taile, and by an other office an other is found heire to the same land as of estate in speciall taile, they shall not enterpleade, as it appeareth in H. 21. H. 7. fo. 36. Also they must bee both found heires, to him that last dyed, and by whose death the king did seise: for if one bee found heire to

him that died seised, and an other is found heire to the auncestor that died seised, next before ỳ last dying seised, in this case they shal not enterpleade, as it appeareth in Ỿ. 2. Ỿ. 6. f. 5. Also they shall not enterpleade, but where both heires claime by one selfe title of lands holden of the king, for if the kings tenant die seised of lands holden of other, aswell as of the king, & one is found heire onely to al the lands, & by an other office, an other is found heire onely to the lands holden of other, in this case they shall not enterpleade, as it appeareth in Ꝑ. 12. E. 4. f. 18. for he that is found heire by the second office, cannot haue liuery, if the enterpleader were found for him, because hee is not found heire of all, as is before remembred. And therefore Ꝑ. 21. Ỿ. 7. f. 35. if one be found heire virtute breuis, and an other is found heire virtute officij, in this case they shal not enterplead, because he that is found heire virtute officij, cannot haue liuery, if the enterpleader did pas with him: for the nature of enterpleader is to haue liuerie for him with whom it is found. And note, that notwithstanding an enterpleader is not to trie the right in the land, but onely the priuitie of blond: yet the issue tried betweene them, shal be an estoppel afterward in an action vsed of the possession of the same auncestor, by whom they claime, as in *Assise of Mortdauncestor*, or *Cosinage*, as it appeareth in *Estoppell* 255. Ꝑ. 4. E. 2. And note, that as two or more shall enterpleade, that claime as heires, euen so shall any other that claime not as heires, but by some other title, if it bee so that their title affirme the kings possession: As take the case to be this: Land holden in chiefe is alyened to diuers persons, at diuers times, & this found by office, the king seiseth, and after commeth euery of the Alienees, & prayeth to make his fine, and to be restored, now they shall first enterplead, & trie which of their feoffements ought to take place, ere any of thē getteth restitution, as appeareth in 43. *Li. Ass. p.* 20. So it is if any of them come into the Chancery without

proces, & confesse thalienation, as it appeareth by the said booke, for by the confession, the king is entitled against him that confesseth, aswell as if it had been found by office.

Trauers. Cap. xx.

TRauerse for goodes was at the common Law, but trauers for lands found by inquisition before theschetors is giuen by the statute made in the 34. yeare of E. 3. ca. 14. which saith in this wise. Item acc' est que la ou terres ou tenements sont seisies en la maine le Roy per office del Eschetor, conteignont que le tenaunt le roy ent fist alienation sans conge le Roy, ou que le tenant le roy per seruice de chiualer morust seisie des terres et tenements auandits en son demesn come de fee, et son heire deins age, et puis la cause certifie en la Chauncery, et celuy qui terres sont seisie veigne en la chancery, et voit trauerser loffice que fuit primes pris per maundement le roy, que les dits terres ne soient my seisiables, foyt a ceo resceu, & soit le proces maundes en banke le roy a trier, et ouster faire droit. This statute extends only to the offices taken virtute breuis, aut commissionis, and not to the offices taken virtute officij. And also by this statut, though the trauerse were found for the party, yet might hee not haue had iudgement, till a Procedendo ad iudicium had been awarded. And therefore was there an other statute made in the 36. yere of the said king, the 13. cha. ẏ tenor whereof is this. Pour les greuouses complaints queux le roy auer oye de son people de ses Eschetours, et de lour male port, il voit & ordeigne del assent auauntdit, que terres seisies en sa maine per cause de garde, soyent saluement gardes sans wast ou destruction. Et que leschetour neyt nul fee de bois, veneson, ne pessoun, nauter riens mes respoigne au Roy des issues et profites, annuels proueignauntes des dits terres,

res ſans waſt, ou deſtruction faire. Et ſil face autrement, et de ceo ſoit attaint, ſoit reint a la volunt le roy, et rende al heire ſes damages au treble, a ſa proper ſuit, ſi bien deins age, come de plein age, et eient ſes amies tanq; il ſoit deins age la ſuit pur luy, reſpoignant al dit heire de ceo que ſerra iſſint recouere. Auxint dautres terres, ſeiſies en la main le roy par enqueſt de office pris deuant leſchetor, teign̄ meſme ceſt ordinance et penance deuers leſchetors. Et ſil eit nul title q̄ mette challēge ou claime as terres iſſint ſeiſies, q̄ Leſchetor maūde lēqueſt en la chauncellary deins le mois ap̄s les tres iſſint ſeiſies. Et q̄ bre luy ſoit huere de certifier la cauſe de ſa ſeiſin en la Chaūcellary, & ill tenques ſoit oye ſans delay de trauerſer loffice, ou autrem̄t mōſtrer ſon droit, et illeōques maūde deuant le roy affaire final diſcuſſion ſans attender aut maūdem̄t. Et en caſe q̄ aſcun veigne deuant le Chanceller, & monſtre ſon droit, p q̄l demonſtrance p bones euidēces de ſon auncien droit & bone title, q̄ le Chancellet p ſa bon diſcretion et aduis du counſaile (ſil ſemble q̄ il beſoigne auoire counſaile) que il leſſe et baille les terres iſſint en debate al tenant, rēdant ent au roy le value, ſi au Roy appiertient, en maner cōe il & les auts Chaūcellers deuant luy ont faits auant ces heures de lour bons diſcretions, iſſint q̄ il face ſuertie, q̄ il ne ſerra waſt ne deſtruction, tanq; il ſoit adiudge. Et q̄ les dits Eſchetors preignent tiels Enqueſts en les bones villes, & p bones gents, & de ceo ouertment, & par endentures affaires enter les dits Eſchetours, & ceux des enqueſts, come auter foits eſtoit ordeign̄ p eſtatuts. Añ 24. E. 3. Et ſi nul Eſchetour face au contrary de ceſt ordinance ſuiſdit, eit la priſon des ij. ans, & couſt̄ ceo ſoit reint a le volūt le Roy.

By the cōmon law before the making of theſe ſtatuts, a mā had noother remedy to auoid a falſe office, but onely his petition. Yalbeit in T. 24. E. 3. f. 54. *Wilby* ſaith, that if theffice had bēn found before commiſſioners, or any other than theſcheator, the party ſhould haue his trauerſe by thorder of the common law. Paraduenture he may be moued ſo to ſay, becauſe

because those statutes giue a trauerse onely to offices found before theschetors, making no mention of any offices found before any commissioners. Also before these statutes if after *Liuerie* or *Ouster le main* sued, ther had bẽn a new office found, whereby the king had bẽn entitled to reseise, & thereupon a *Scire facias* according to ỹ statut of Lincoln against the party ỹ had pursued ỹ liuery or *Ouster le main*, to come & shew why the land should not be reseised, the party in ỹ *Scire fac.* might haue trauersed ỹ office that was so newly found, as I shall more plainly declare when I come to ỹ place, *Cap. 26. fo. 80.* Also *Bab.* said in the eschequer chamber before al ỹ Iustices. Trauers 47. Añ 8. H. 5. that these statuts that giue trauerse are onely to be vnderstãd, where ỹ king is entituled to ỹ lãd but for a time, as for wardship, alienatiõ wout licẽce, & such like. But if his highnesse be entitled to the fee simple, or the freehold, there he ỹ is put out by the office shall not haue his trauerse, but is put to his petition, Tamen quere, for though the first statut be thus, as *Bab.* hath said, yet the secõd is not, but general, & therefore may bee extended to all offices what matter soeuer they conteyne, as appeareth Trauers 37. H. 19. R. 2. where it was found that one had encroched vpon the kings demeans, which office indeed was false, for ỹ the thing supposed to be encroched was parcell of his manor ỹ was so presented, & no part of the kings demeanes: in this case, the party being put out of ỹ parcel of ground by theschetor, was receiued to trauerse the office, & yet the office entitled the king to the fee simple. Also these statutes seeme not to giue trauerse, but to him that is put out of possession by that office. But the stat. of 8. H. 6. c. 15. alloweth any trauers proffred by him ỹ feeleth himself greeued by any such enquest, although hee be not put out of possession by theschetor. And the statute seemes also to allow trauers of an office taken, aswell before commissioners, as before the eschetor. Howbeit that statut giueth no trauers, but onely maketh therof a reber-

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ſall. Theſe ſtatutes that giue the trauerſe, ſéme to offer it generally to any man that will deſire it, or that doth put challenge or claime to the lands wherof he is put out by any office. Howbeit the expoſition hath bén otherwiſe, that is to ſay, that his challége or claime muſt be ſuch, as the Law wil admit & allow, for euery man can not trauerſe that would, or that maketh his challenge or claime: for theſe ſtatuts are intended where the king is entitled by office onely, for if his Highneſſe be entitled by an other record beſide the office, & entitled as it were by a double matter of record, ỹ party ſhal neuer haue his trauerſe. As take the caſe to be this, a man is attainted of Treaſon by act of parliament, or otherwiſe by verdict, & afterward it is found by office that the ſaid perſon attainted was ſeiſed day of the treaſon cõmitted of certaine lands, which in déed were neuer his lands, but mine, in this caſe if I bée put out of my land by this office, I cannot trauers it, Cauſa qua ſupra, and yet I am a ſtranger to this record, as appeareth in 40. Aſſ. 24. P. 49. E. 3. 11. H. 10. H. 6. 15. H. 4. E. 4. 22. & T. 14. E. 4. fo. 7. But if there be no ſuch record of attainder, I ſhalbe receiued wel ynough to trauers the office, alleaging firſt to enure mée to a trauers, that there is no ſuch record of attainder, as appeareth in P. 4. H. 7. f. 7. Alſo he that is found heire by office, ſhall not trauers ỹ ſame office that ſo findeth him heire (if that part of the office that concerns the tenure in chiefe be true) although the reſt of the office be falſe: and therfore if the kings tenant dye ſeiſed, his heire being of full age, & by a falſe office ỹ heire is found vnder age, in this caſe, he cannot trauers this office, as appeareth T. 5. E. 4. 3. and the reaſon of it is, becauſe the heire cannot falſifie the office that he himſelfe is to affirme by his Liuerie when he ſhall ſue it: For though he would cauſe an other office to be found according to the trueth of the matter, yet it were not to ỹ purpoſe to help him, for the beſt office ſhall be taken euermore for the king, that is to ſay, that that giues

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his Highnes moſt auantage, & the heire driuen to ſue his liuery vpon the office onely, for ſeeing the king is bound by an office as well as is the heire, it is reaſon if any be better for him than other, ỳ he be bound to that only, & not to the other, & the law preſumes the one office to be as true as thother, vntill ſuch time a triall thereof be made, which triall cannot be by the heire, for he is bound as I ſaid before by the office that is foũd, without any further choiſe hauing no preroga-tiue in ſuch matters, & if he ſhould be receiued to his trauers in this caſe, then vpon the trauerſe found for him he ſhould haue the lands out of the kings hands by an *Ouſter le main*, without any liuerie ſuing, as lands that the king ought not to haue ſeiſed, which were inconueniẽt. For euery way the king ought to haue ſeiſed thoſe lands againſt any that claimeth to be heire, vntill ſuch time as liuerie be ſued therof. Like law is it where ỳ kings tenant dyeth ſeiſed of land in diuers counties, his heir being of full age, & in one county, ỳ ſame heire is founden within age, and in another county he is found of full age, in this caſe the heire ſhall not trauerſe the office that foũd him within age, *Cauſa qua ſupra*: for then for the lands in one countie he ſhould haue them out of the kings hands without any office or liuerie ſuing. And this caſe appeareth in Trauers 39. H.3 2. H.6. But if an office find ỳ my father held his lãds of the king in chief by knights ſeruice, where in dẽd he held not of him in chiefe, in this caſe I ſhalbe receiued to trauerſe this office. For if I ſhould ſue my liuery vpon the ſame, I ſhould be concluded euermore after to ſay, but that the lands were holden in chiefe of the king, and for ỳ cauſe I ſhalbe receiued to my trauers as euerie ſtranger ſhall be in the like caſe: for if my trauerſe be true, then can the king haue no cauſe to ſeiſe thoſe lãds, and therefore not like the caſes before remembred, as appeareth H.1. H.7. fo. 3. & 18. The words of ỳ ſtatutes be, ỳ he whoſe lãds be ſeiſed ſhal trauers, or he ỳ putteth challeng or claime

to

to the land so seised. These words be not so generally vnderstood as they be spoken, for most men vnderstand them, that he that will challenge or claime but a terme of yeares onely, shall not be receiued to his trauerse, where the king is intitled to the freehold by thoffice, as where it is found that the kings tenaunt is seised of certeine lands, & is dead without heire, whereby the landes ought to escheat to the king, commeth one and saith, that he is tenant for terme of yeares of these lands, of the demise of a stranger, without that, that he that is supposed to be the kings tenant, was euer seised of these lands, this trauerse lyeth not in his mouth: for hée that hath but a chattel, shall not be receyued in any case to falsifie the Record that giueth any man interest in the freehold, although hée be a straunger to that Record. Contrary law is it of him that hath a freehold, or inheritance in the land, for they shall trauerse the Record in such case. Like law is it, where the king is intitled but to the wardship of the heire of his tenant, he that is Fermer of the demise of a stranger shall not trauerse his office, although the king be not intitled thereby to any freehold: for it was not the minde of the makers of these statutes to helpe them that claime, but Chatels which are accompted in law as nothing, because they perish and abide not. Et de minimis non curat Lex. Nowbeit, learne what the Law will in these cases, for I haue séene no bookes of them. The Lord in title of wardship shall trauerse the office, and yet he claymeth but a terme of yeares in the land, as where it is found by office that such a one held lands of the king in chiefe, and dyed, his heire wythin age, where in déed hée holdeth no such land of the king, but only of mé by knights seruice, in this case, I that am Lord shall trauerse this office, that is to say, shew how they bé holden of mé by knights seruice, without that they bé holden of the king, as appeareth in 9. I. H. 7. fol. 3. For there it toucheth the

Lords

Lords inheritance in the right of his seigniorie, and because he by the false office is to lose the profit that is presently fallen, by reason of his seigniorie, it is reason he be receiued to trauers the office. But if hee were but Lord in Socage, hee should not be receiued to his trauerse, because he therby can make no title to the wardship of the body & lands of the child, for it is a good generall ground, if the king be once seised, his Highnes shall retaine against all other that haue no title, notwithstanding it be found also that the king had no title, but that the other had possession before him, as appeareth in 37. li. ass. P. 11. where it was found that neither the king, nor the partie had title, and yet adiudged that ỳ king should reteine, for thoffice that findes the king to haue a right or title to entre, makes euer the king a good tytle although it be false, and his Highnesse thereby may take possession against any other that is seised of the lands, and reteine vntill such time as thoffice be trauersed by him that hath title and tried to bee a false office. And therefore no man shall trauerse thoffice vnlesse he make him selfe a tytle. And if hee cannot proue his title to be true, although he be able to proue his trauerse to be true, yet this trauers will not serue him. As for an example, it is found the kings tenant died seysed of certeins lands that he held of the king in chiefe, his heire being within age, where in deede he had made a feoffement in his life time to another of those lands, it is no trauerse for the feoffee to say he dyed not seised, but he must first make himselfe a title by the feoffement: & for asmuch as it is found that the lands are holden in chiefe, if he will make his title good against the king, he must shew forth a licence of alienation, or a dispensation therof, or els he must trauers the tenure in chiefe, as well as he shal do the rest of thoffice, otherwise his title is not good, as appeareth in P. 36. E. 3. *Trauers* 44. & 46. *Lincrie* 18. P. 36. E. 3. f. 4. P. 3. [illegible] P. 3 P. 7 f. 14. Howbeit *Hussey* holdeth opinio[n] [illegible] P. 7. 18. that

that no man may trauers ẏ tenure but the Lord, or the heir, vnlesse his title be found by office, but whether the law be so or not learn, for as I take it the lord and euery stranger that hath a title against the king, making his title, shall trauerse the office before his title be found by office: for when the trauers is found for ẏ party, his title now appeareth of record, and by the trauerse found, the office which was the kings title, is vtterly destroyd and gone, so that now the king is not to make any liuery of the lands to any person, but onely to amoue his hands from the same, with the meane issues and profits, as one that had no cause to seisie them. And therfore euerie man may enter now that will, if he haue right or title of entre to the lands, for the king deliuereth them to no person certein, but only ridds his owne hands of them as he that had neuer seised them, but otherwise it is where the king is to make liuerie, for there his highnesse must bée enformed certeinly by matter of record, who shalbe his tenant, and who it is ẏ ought to receiue the liuery at his hands, least his highnes be deceiued in thadmitting of his tenāt, which is & ought to be a great matter toward the lord, and therfore the cases be not like, wherfore I think a man may trauerse by force of the statuts, without hauing their title first found by office: & so be our books P.35.E.3. Trauers 44.M.12.E.4.f.18.P.16.E.4.f.4.& 43 *li.ass.* P.20. Howbeit Trauers 45.T.5.E.4.f.5. séemes to way to ẏ contrary hereof, and P.12.H.6. also, where it is said, that if it be found ẏ the kings tenant died seised, where in déede he was iointly enfeoffed wͭ me, now can I not trauerse this office, except another office were found for me. But contrary law should it be, if I had bin found by the office iointenāt with him for terme of life, where in déed I was iointenant with him in fée simple, in this case I may trauers thoffice, because mention is made of me in the said office, this booke case admitted to be law, yet it varieth from ẏ case before remembred of the stranger

that

that trauerſed thoffice, for thoffice is true, and when it is found by office that hee dyed ſeiſed, this may bee although the ſaid dying ſeiſed were ioyntly with another, for any thing that is expreſſely found to the contrary, and then the king here is to admit another tenant, as in the caſe of the liuery, before whom as yet he hath no credible information. that is to ſay, by matter of record, and then it is like to the caſes of tenant by the curtiſie, tenaunt in dower, and the deuiſee which in no wiſe can bee admitted to their eſtates vnles mention be made of them in the office or ſome other office or matter of record found for thē, as appeareth in P. 9. H. 7. f. 24. Briefe 618. P. 46. E. 3. & M. 11. H. 8. Deuant f. 17. and for none other reaſon as I gather it, but only for ỹ thoffice is true, & they are to be admitted ỹ kings tenants which cannot be but by information by matter of record, Vt ſupra. Then let vs reſort to the place we were at before: ỹ is to ſay, no man may trauerſe with the king, vnleſſe he make himſelf a good perfit title, as to ſay ỹ the tenant which is ſuppoſed to die ſeiſed did infeffe him, or ỹ a ſtranger was ſeiſed & did infeffe him, without that, ỹ he died ſeiſed. And ſo note by the way that he may cōuey his title as wel frō a ſtranger, as frō him that is ſuppoſed to die the kings tenaunt, as appeareth in P. 36. E. 3. Trauers. 44. and when he hath made thus his title, then he muſt trauers the kings title, which is thoffice, for it is not enough for him to reſt vpon his owne title, although it be neuer ſo ſtrong, without anſwering the kings title, yea although it were good againſt a common perſon, yet againſt the king it is not ſo without trauerſing the office. And therfore if he wil ſay ỹ his tenant in his lifetime did leuy a fine vnto him of theſe lands, ſur conuſaunce de droit, cōe ceo quil ad de ſon done, by vertue whereof hee was ſeiſed, vntill ſuch time as he was put out by this office, and praieth reſtitution, this is no ple againſt the king, and yet this matter were a good plee in Aſſiſe of Mordaunceſter brought by the

heir, for in that case he should be estopped by this fine, which is executed to say the contrary therof, that is to say, that his father dyed seised without shewing how his father got the possession againe since the time of the fine leuied. But it is no plee against the king, for the king cannot bee estopped, namely in this case, being a stranger to the record. And also the statutes giues a trauerse, and by this maner of pleading he taketh no trauerse. Like law is it, if it be found by office, that the kings tenant in chiefe infeoffed one B. without licence comes one D. and saith, that hee dyed seised, and his heire entred and infeoffed him by the kings licence, this is no plee without trauersing the feoffement made to B. and yet against any common person it were a good plee, but not against the King, for his title must bee answered fully: and this is the feoffement, and these cases appeare in Trauers 17. P. 46. E. 3. f. 43. lib. ass. p. 20. Also it is not sufficient to trauers one of the kings titles, but hee must trauerse them all, for though the kings title that hee is seised by, be found not good, yet if there be any other record that makes the king a title whereby he may retaine the lands, the party must auoid also that title, or els he gets no Ouster le maine M. 9. H. 4. f. 7. but learne if there bee no such record in Esse, or being at the time of the trauerse tended, & hanging the plee vpon the trauerse a new record, that is to say, an office is found which intitleth the king whether in this case the party shall be driuen to trauerse his office or not, ere hee haue his Ouster le maine. And it seemeth he shal not: for so he might be delayed of his possession infinitely by finding one office after another, wherefore this office found, hanging the trauerse shall be accounted in lawe as though it had bin found after the party had had his Ouster le main, in which case then the party vpon the first trauerse found for him, shall bee restored to his possession by an Ouster le maine, and then after vpon a Scire facias sued against him

him to shew why these lands should not bee reseised, vpon this new office found for the king, hee shall bee receiued in that Scire facias to trauerse this new office. Now be it this auantage hee winnes hereby, that is to say, he then trauerseth with the king, keeping still his possession, where els hee should trauerse being still out of possession. And this case ye may finde T.11.H.4.f.80.& M.13.H.4.f.8. Thus may yee see when a man trauerseth with the king, hee must trauerse all the kings titles that haue then their being by matter of record, and not bounden any further to aunswere for that time. Then let vs see how the king shall reply vnto this trauerse: and in that it is to be noted, that ỹ king hath a prerogatiue that a common person hath not, for his highnes may chose whether he wil maintaine the office, or trauerse the title of the party, and so take trauerse vpon trauerse, or when al his titles be trauersed, his highnes may chose to maintein them all, or els but one of them P.13.E.4.f.8. But then note, that if hee maintaine but one, that is to say, take issue but vpon one which is found with him that tended the trauerse. In this case the party shall haue his Ouster le maine, notwithstanding there be no issues taken vppon the other title H.4.H.7.f.5. but whether the king shall euer take auantage of thother title after or not, this is to be seene? & I thinke he should, for though the other titles shall not in this case let the party of his Ouster le maine, yet it seemes the king may call the party againe by a Scire facias to answeare his other titles, or els his highnesse to reseise, as I said before, for no Nient dedire can prejudice the King, Nec tacita renunciatio, like as it may doe a common person. And therfore seeing hee did not renounce his other titles openly nor expressely, it seemeth his highnesse by his prerogatiue shall haue auantage of them at any other time, when it shall bee his pleasure. And these cases yee may see M.9.Henry 4.fol. 6. Now bee it it appereth in the

ſaid booke of P.13.E.4.f.8. that after the king ioyneth an iſſue vpon a trauerſe, his highnes cannot in another terme waiue his iſſue and take a new, for ſo the partie might bee delayed infinitely of his right, which ſhould bee as it were a wrong committed vnto the party, and the king by this prerogatiue may do no man wrong: but after iſſue ioyned hee may demurre in law, and waiue the iſſue, for there is no matter chaunged, but the old remaineth M.3.E.4 f.26. And by the demurrer the law preſumeth that the iſſue was ioyned, and ſo might be a Ieofaile, and therefore his highneſſe may demurre in Law after iſſue, but not change his iſſue, and take a new. And note that if the party take a trauers which is iudged inſufficient in the law, this is peremptory vnto him, and he ſhall not be receiued after to take a newe, as appeareth in 40.Aſſ.24. Howbeit T. 14. E. 4. the contrary opinion is holden, and that it is not peremptory, becauſe it proceedeth in the Chauncerie, which is the Court of Conſcience. But as to that a man may anſweare and ſay, that a Chauncellour hath two powers, the one abſolute, the other ordinarie, and this trauers is before him by an ordinarie power, in which caſe all things touching the ſame, muſt proceed as it ſhould before any other ordinary Iudge of the common Lawe, and therefore it ſhould appeare by a booke in H.4.H.6.f.2.& H.11.H.4.f.25 P.22.E.4.f.9. Trauers 12.H.3.H.7. that if the partie be nõſuit in this trauerſe, it is perẽptorie vnto him, for ſo might he delay the king infinitely, tamen quere: and learne whether one may proceed with a trauerſe, the heire beeing within age, or els ſhall tarry til he bee of full age, for the booke is in T.5.E.4.f.5. that he ſhall tarry till the heire commeth to age. But in this queſtion one may make this diſtinction, that is to ſay: Whether the trauerſe bee tended by a ſtraunger, or by the heire (for ſometimes it happeneth, that the heire ſhall trauerſe as well as a ſtraunger.)

For

For no more than a stranger can haue Ouster le maine without trauersing all the kings titles, no more may the heire haue liuery without trauersing all his titles, and then if the trauerse bee to be taken by the heire, hee shall not bee thereunto admitted vntill hee bee of age, because that before that time hee hath no cause to haue his liuery. But that reason serues not where the trauerse is to bee taken by a stranger, and therefore it should seeme that he should haue it by and by: For he hath cause to haue an Ouster le maine forthwith, and that with the meane issues and profits, and therefore it were no reason that the nonage of a third person should hinder him with whom he is not to plead or to try any right but only with the king.

For if the child haue right, hee may enter vpon the stranger after he hath his Ouster le maine and try his right with him; and so at no mischiefe. And note as I said before that the heire must trauerse all the kings titles ere he can haue liuery, and that whether the kings title bee in his owne right or in the right of another, his owne right, as if there bee a record that proues this land to bee aliened without the kings licence or that thaunceſtor of thinfant that would sue his liuery was but tenant for terme of life, the reuersion to the king, and hath made a feoffement to the kings disheritance or such like, in these cases notwithstanding the king did not seise by vertue of these records, but onely by vertue of the office, which found, thaunceſtour of thinfant dyed seised the kings tenaunt in chiefe of estate in fee simple, yet the heire getteth no generall liuery vpon that office vntill such time as hee hath auoided these other records. And if hee haue it before: it is a cause of reseiser. So it is where the kings title is in right of any other, as if one bee found heire by office, and after by another office another is found heyre

of the same land to the selfe same auncestor, in this case he that was first found heire cannot haue his generall liuery vntill such time as hee hath destroyed the other tytle, eyther by an enterpleder or a trauers, for if it so come to passe that he cannot enterpled, then must hee trauerse or by some other meanes auoid the record ere hee can haue his said generall liuery, as if hee sue his generall liuery otherwise it is then misused, and a good cause giuen to the king to reseise. And this enterpleder or trauerse betweene them that claime as heires is by the order of the cõmon law and not by statute, and can neuer bee, but where both their tytles bee found first by office, and the reason is, bycause that as sone as the matter is discussed betweene them, hee for whom it is found shall forthwith haue his generall liuery, which hee can neuer haue if his tytle be not first found by office: and therefore not like the case where a stranger trauerseth with the king that is to haue but an Oustes le maine, for there the king had no right to seise, and therefore his tytle neede not to bee found by office as I haue said before. But in the other case whosoeuer shall claime the land as heire, his highnes hath right to seise in the right of the said heire, and to haue his primer seisyne or wardship as the case doth require. And therefore his tytle must bee first found by office: but where one heire is to trauerse with another heire during the kings possession, this shall not be vntill hee that is first found heire by the office come of age, because vntill that time, the lands ought to remaine in the kings hands, and then hee to haue liuery: but whether hee that was first found heire should tarrie for thage of him that was last found heire, I haue said my minde therin before in the title of Enterpleder ca. 19. But where a stranger is to trauerse, he shall not tarry for thage of the heire for the causes before remembred.

And

And so there appeareth to be a great difference betweene a trauerse taken by him that is a straunger, and by him that is heire. But at this day most Liueries that bee sued are speciall Liueries, which conteine in themselues a pardon, and therefore the misusing of them is dispensed with all by the words of the pardon contained in the said liuery. And so many of these things that I haue spoken of before are not much to bee obserued if the liuery or Ouster le maine be not generall. (For I see no let but that an Ouster le maine may bee graunted spetially as well as liuery.) And last of al, it is to be noted that this trauers extends not to euery record that entyteth the King, but onely to such records as bee trauersable, as an office or such like, as I shall shew my minde thereof more fully in the chapter of Petition. Other trauerses there bee which bee trauerses by order of the common law. And not by any Statute, as trauerses vpon Endictements or Presentments, whereof I entend not to entreat in this place, among which trauerses there is also by order of the common law a trauerse concerning goods and cattels of persons attainted, for the which a man shall trauerse with the King, although his tytle thereunto bee by double matter of record. As take the case to bee, a man is attainted of treason, or felonie, or outlawed in a personall action, and after by office is found that hee was possessed of a horse or any other goods as his owne proper cattell, where in deede they bee the goods of a straunger, in this case the said straunger shall trauerse this office with the King. H. 4. E. 4. fo. 24. H. 13. E. 3. fo. 8. & H. 47. E. 3. fol. 26. So is it if it bee found by office that a man outlawed in a personall action is seised of certeine lands, which indeede are lands, and the escheatour by force of that false office takes the profites, in this case I may disturbe him

without trauersing thoffice. And this case appeareth T. 9 H. 6. fo. 20. Then further. The words of the said statutes of Anno 36. bee, that if any come before the Chauncellor and shewe his right, whereby it may appeare by good euidence that he hath an auncient right and good title, then the Chauncellor shall let the said lands to the partie that tendeth the trauerse yelding to the king the value if it bee adiudged for the king in maner as hee and the other Chancellor haue done before him by they good discretions, so that hee to whom it shall bee letten, finde securitie to do no waste or destruction before the trauers bee discussed. By the woords of this statute, it should appeare that the chancellours before this time by their discretions had vsed to let the lands to the party to ferme, and that is true, for the king vsed so to doe vpon a petition which was made to his highnesse by the order of the Common Law in steed of a trauerse now vsed, as appeareth H. 5. E. 3. fo. 6. and therfore I thinke his highnesse may doe so at this day both vpon a petition and a Monstrance de droit, although the statute make no mention thereof, for so it was vsed to doe by order of the common Law, as it appeareth by the booke before. And of this matter see Trauerse 12. H. 3. H. 7. Now is this statute amplified and made plainer in this point by the statute made in the 8. yere of H. 6. the 16. chapter, which will that no lands or tenements seised in the kings hands vpon enquest taken before eschetours or commissioners be in any wise graunted or letten to ferme by the Chauncellor or Treasoror of England or any other the Kings officers, till the said enquestes or verdits bee returned fully into the Chauncery or thescheqer, but all that time shall abide in the kinges handes and by a moneth after the said retourne, if it bee not so that hee or they that seke themselues greeued by the said enquest or that are put out

of

of their lands and tenements come into the Chauncery and offer to trauerse the said enquests, and to take the said lands or tenements to ferme, which if they do, then the said Chancellour, Treasorer, or other officer, shall let them haue them to ferme shewing good euidence, prouing their Trauerse to bee true, according to the forme of the statute of anno 36. E. 3. to hold til the issue vpon the said Trauerse taken be found and discussed for the king or els for the partie, and also finding sufficient suertie to pursue the said Trauerse with effect, and to render to the king the yerely value of the tenements whereof the Trauerse shall be so taken, if it bee discussed for the king. And if any letters patents of any lands or tenements be made to any other person to the contrary, then the same to be voyd after the moneth. Hereupon is to be noted, that the shewing of the euidence is onely referred to the letting of the lands to ferme, and not to the Trauerse. For by this statute hee may Trauerse without shewing any euidence, but not haue the lands to ferme. Also by these Statutes hee is not bound to no certaine time for taking of his trauers, but only for taking of the lands to ferm, for hee may tend his Trauerse when hee will, so hee desire not the ferme of the lands. But if hee will haue them to ferme, hee must tend his Trauerse within the moneth, as appeareth P. 13. Edward 4. folio 8. and now by the statute of Anno primo H. 8. chapter 16. hee hath three monethes libertie to doe it. Also note the things that hee must find suerty for, that is to say, to sue with effect, to pay the rent after the Trauerse bee discussed, and to doe no wast, or destruction. In this word rent is implyed all the arrerages of the rent that shall incurre meane betweene the taking of the ferme and the discussing of the Trauerse, and yet it is not so expressed. Also the lease that is made to him that

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tends the trauerſe is not of any terme certeine, but onely by theſe wordes Donec diſcuſſum fuerit, for the wordes of the ſtatute bee ſo, and therefore as ſoone as the trauerſe is found againſt him that tendeth it, by and by the leaſe hee had in the lands by force of the ſtatute is void wythout any further proces, as appeareth in P.4. Edward the fourth folio. 29. Howbeit forasmuch as the wordes bee to hold tyll the iſſue vpon the ſayd trauers taken bee found and diſcuſſed, for the kyng or for the party, I would learn if the party bee nonſuyt vpon his trauerſe or that the trauerſe bee aiudged againſt him vpon a demurrer in law, whether the leaſe would bee voyd or not, lyke as it ſhalbee vpon the iſſue found. And it ſeemes it ſhall bee by the wordes comprized in the ſaid ſtatute of anno. 36. Edward. 3. But not by any wordes comprized in the ſaid ſtatute of anno 8. Henry the firt For the wordes bee tanque il ſoyt aiudge, and therewith agreeth the booke in H.4. H.6 folio. 12. Alſo note that before this ſtatute of an. 8 H.6. The king did vſe to graunt the cuſtody both of the lands and body to any other to whom hee would after office and before any trauers tended, and this graunt was good, beecauſe it was not then reſtrained by any ſtatute. Howbeit vpon the trauers tended a Scire facias ſhould haue beene awarded againſt the patentee comprehendyng in the ſame all the trauerſe. And if hee had beene retorned, warned, and came not, his patent had beene voyd eo facto, as appeareth in the ſaid booke of H. 4. H. 6. fo. 12. at leaſt wiſe for the lands, and yet there was then no eſtatute that made them void, quod nota. And then by and by they ſhould haue beene letten to ferme to him that had tended the trauerſe. But now whether ſince the making of the ſaid ſtatute of anno. 8. Henry the. 6. a Scire facias ſhalbee awarded againſt the patentee vpon a trauerſe, learne

for

for the said Statute makes such Letters pattents void for the graunt of the lands, but not so for the body, and therefore it seemes a Scire facias shall bee still awarded, and the graunt also of the sayd lands is not voyd till after the Moneth. And now by the said statute of Anno 1. Henry the 8. not till after three monethes, and so it should seeme by the booke of P. 5. E. 4. fol. 3. H. 14. E. 4. fol. 1. H. 8. H. 6. fol. 17. that a Scire facias shall bee awarded at this day, notwithstanding the statute of 18. Henry 6. ca. 6. which ordaines, that all letters patents made before the kings title found by inquisition returned into the Chauncery or other matter of record, shall bee voyd. For that statute also extends but to lands or tenements, no more than the other Statutes doo, so that the graunt of the bodie, or of any other thing which is no land or tenement, is good at this day, before any office or inquisition thereof found. And it is further to be noted, that this statute of an. 18. Henry 6. makes no such letters patents good for any time which hee granted contrary to the tenure of that statute, but they be voyd forthwith. And learne and enquire if at this day within one moneth, or three monethes after office found and returned, the Master of the Kings Wards and Liueries, with aduise of one of the counsel of the kings court of wards and liueries made a lease of the wards lands, or of an ideots lands being in the Kings hands for the time of the kings interest in the same, and after within the time appoynted by the statute comes a Straunger and trauerseth the office whether in this case hee shal haue the lands to ferme or not. And it seemes that no, because this statute that giues that power to the Maister of the Kings Wards, was made long time since the statutes of anno 8. or 18. Henry 6. that is to say in the 32. H. 8. cap. 40. which statute is generall, and no sauing or exception made of thother statutes before.

And

And then it is a generall rule Quod posteriores leges priores contrarias abrogant. And some thinks at this day for wards lands, or Ideots lands there shall bee no letting of them to ferme to him that tended the Trauers, if they were letten before the Trauers tended by the master of the kings Wardes, but of other wards it remaines as it was before the making of this statute of anno 32. Henry 8. and note, that if the King seise not for any Wardship, but onely for Primer seisin, because the heire is of full age, if a straunger in this case will trauerse it is to little purpose. For if the king by and by after will make liuery to the heire, the trauerse is become void, as appeareth M. 1 H. 7 fol. 27. for the King in that case hath no cause to retayne the land, but to deliuer the same to him in whose right hee seised being able for it, and he that tended the trauers is at no mischiefe, for hee may now after this liuery pursue for his remedie against the heyre, and if it should tarry in the Kings hands for the Trauerse sake, his highnesse should then haue all the profits, if the Trauerse were found with him for all the time that the said Trauers did depend, whereunto his Highnesse hath no right, but onely the heyre, and therefore it seemes there shall be no trauers but where the land is to abyde in the Kings hands for a certayne time, as for Wardship, fine for alienation, or such like. But if hee that tended the Trauerse bee found heire by office, and is to haue liuery of that land as well as the other that was first found heire, otherwise it is for the reason made before. And so of an enterpleder, For in that case the King is bound to make the liuerie to him that is tryed rightfull heire, but not so in the case of a trauerse tended by a straunger which claimes not as heire, for hee is to haue no Liuerie, but onely an ouster le maine, by which ouster le mayne the King deliuereth nothing but leaues his owne possession

as

as one that hath no right to keep the poſſeſſion any longer. And it appeareth ſufficiently, that he had no right to keep it, after the time the heire that ſhould haue it was of full age. Wherefore a ſtraunger in that caſe cannot trauerſe, for ſo two that had no right, by trauerſing together might keep the third that hath right from his poſſeſſion, which was neuer the meaning of the makers of the ſaid ſtatutes. And notwithſtanding that this booke M.1.H.7.fol.17.be, that after the trauerſe, and before the ferme graunted the liuery was made, yet that makes no difference, for whether the ferme were graunted before the liuery, or after, when the trauerſe is become void by the liuery, the ferme which dependeth vpon the ſame is alſo void, as me ſeemeth. And note alſo that the ſayd ſtatute 1.H.8.cap.10. which giues three monethes for hauing the lands to ferme, makes no mention of the Treaſorer of England, but onely of the Chauncellor, ſo that for any thing that is to be letten by force of that ſtatute, it muſt be done onely by the Chanceller, and not by the Treaſorer: as it ſhould ſeeme as well of offices returned into the eſchequer, as into the Chauncery, and therefore within the moneth after an office returned into the eſchequer, the Treaſorer may let the lands to ferme to him that tends the trauerſe according to the ſaid ſtatute 8.H.9. But if it be to let after the moneth, the Chaunceller of England muſt do it as it ſhould ſeeme. And note alſo that by a ſtatute made anno 1.H.8.cap.12. Any perſon that ſued his liuery in time of King H.7. vpon any office that found he held in chief, where indeed he held not in chiefe, which ſaid offices were found by the procurement of Empſon and Dudley, in the time of the ſayd late king, may trauerſe thoffice in like maner and forme as he might haue done before the liuery ſued, if it be ſo that he be now ſeiſed of the ſame lands, ſauing that hee ſhall not be reſtored to the meane iſſues and profits. This

ſtatute

statute seemes not to extend to the parties heires that had liuery, but onely to the party himselfe. Quære hoc. And note that in the court where the office is first returned into, there I shall tend my trauers: as if it bee returned into the Chauncery, then in the Chauncerie: and if in the Exchequer, then in the Exchequer, as indeed all offices Virtute officij are returnable in the Exchequer onely, and such as be Virtute breuis vel cōmissionis, be returnable in the Chancery, M.4.E.4.fol.24. And now by the statute of 33. H.8. cap.22. no Eschetor may sit, virtute officij, onely to find any office of lands holden of the king of the value of v. l. or aboue, vpon paine to forfeit v. l.

Monstraunce de droyt. Cap 21.

The statute of anno 36. Ed.3. that giueth a trauerse, saith in this wise: Et sil eit nul home qui met challenge ou claime as tres issint seisies q̄ leschetor maunde lenq̄st en la chancellary deins le moys aps les tres issint seisies, & q̄ br̄ luy soit liur̄ de certifier la cause de sa seisin en la chancellary, & illonq̄s soit oye sauns delay de traūser loffice, ou autm̄t monstrer son droit, & illonques maunde deuāt le roy affaire final discussion sans attender aut̄ maundement. This statute speakes both of Trauerse and Monstraunce de droyt disiunctiuely, whereby a man may gather, that if Monstraunce de droyt were not by the order of the common law, as it is said H.9.E.4.fol.52. & P.13.E.4.fol.8. that it is, yet were it giuen by this statute. And no booke that beares date before this statute can I find that treats any thing of Monstraunce de droyt. Wherefore without

Mrans de droit et Tra. dans p statut de 36. E. 3.

nec Book p̄ses de mrans de droit de l. 36 E 3. fol. 52

(without prejudice to any mans opinion) mine opinion is that it is giuen onely by this ſtatute: but whether it bee ſo, or not ſo, I do not greatly force. Let vs ſee what it is, and in what caſes it lyeth. If the king bee intitled by office, or other matter of record, that is trauerſable. Howbeit there is no cauſe of trauerſe, for that the office or record is true, in this caſe any man hath right to the poſſeſſion of the freehold of this land, which in ſhewing of his right is able to confeſſe this office, and auoyd it, ſhall bee receiued (if hee be put out of his poſſeſſion, or grieued thereby) to come into the Chauncery and ſhew his ſayd right, which being there prooued to bee true, iudgement ſhall be giuen that the kings hands bee amoued from the poſſeſſion of the ſaid lands with the meane iſſues and profits to bee reſtored vnto the party that ſueth the ſayd Monſtraunce de droyt. As for an example, It is found by office, that the kings tenaunt by knights ſeruice in chiefe died ſeiſed of certaine lands which are deſcended to his heire being within age, where indeed in his life time I recouered this land againſt him, and ſuing no execution, ſuffered him to dye ſeiſed thereof, now vpon this office returned in the Chauncery ſhall I come and ſhew my right, that is to ſay, this recouery, and auerre that this land found by office, is the land that I recouered, or parcell thereof, which being ſo prooued and tried, I ſhall haue an Ouſter le main, 3. H. 7. Like law is it if the kings tenaunt diſſeiſed mee of thoſe lands, and I made my continuall clayme, or that I had title to enter for condition broken into the ſaid lands in the life of the kings tenant, and I entred, and after was diſſeiſed by him. But quære if I did not enter in his life, whether now I may bee holpen by a Monſtraunce de droit vpon the Kings poſſeſſion. And mee thinkes not, becauſe I haue no right in that caſe till I enter, for vntill that time the right continueth ſtill in him, ſo that the king hath a right ere I can haue a right, which ought

ought to be preferred and take place, ſince it is but for a time before mide. And for theſe caſes ſee the booke of H. 3. H. 7. fol. 2. But if the King bee intitled by matter of Record, not trauerſable, as if hee bee intitled by double matter of Record, in this caſe I cannot haue my Monſtraunce de droyt, no more than I can haue in the like caſe of Trauerſe, vnleſſe my title be found by one of the ſaid records, H. 9. E. 4. f. 51. As take the caſe to be, it is found by office, that one ſuch that holdeth of the king diſſeiſed me, & then committed a felony, vpon whom I entred, after which entry the ſaid tenãt was attainted of the felony. In this caſe I ſhall haue the land out of the kings hands by a Monſtraunce de droit, cauſa qua ſupra. And yet the kings title is here by a record, and not trauerſable, that is to ſay, thattainder. But what then? My title is alſo found by office, and appeareth by matter of record, which being proued true, doth clerely auoyd the kings poſſeſſion, and that is the reaſon I ſhall bee receiued in this caſe to a Monſtraunce de droyt, as appeareth in H. 3. E. 4. f. 26. A. 4. H. 7. fol. 6. And therewith agreeth the booke H. 4. H. 7. fo. 7. where king Richard the third was attaynted of treaſon by Act of Parliament, and found by office, that he was ſeiſed of certaine land, commeth one B. and ſayeth, that in the ſayd Parliament it was enacted, that an attainder of treaſon had againſt the father of the ſayd B. ſhould be auoided and annulled, and hee reſtored to his lands, and that theſe lands comprized in the office were in the hands of the ſaid K. R. by attainder of his father, & adiudged that vpõ this Monſtraunce de droit the party ſhould haue reſtitution becauſe his right appeared by matter of record. Otherwiſe is it where it is found by office ỹ ſuch a one is attainted of felony, & is ſeiſed of ſuch lands which are holden of the K. now hee that hath cauſe to ſue his Monſtraunce de droyt, cannot bee admitted thereunto, by reaſon of theſe two Records. Howbeit, if it bee ſo that there is ſuch attainder indeed,

then

then may the party that would ſue a Monſtraunce de droyt ſay, that there is no ſuch record of attainder, which being found true, he ſhall be received to his Monſtraunce de droit, as appeareth in the ſaid booke H.4. H.7. fol.7. For now is there no record againſt him, but onely the office: and notwithſtanding that by the office the attainder is found, yet this finding makes nothing for the king, if it be untrue. For the Jurie can never find a matter of record, and if they doe, it is to little purpoſe: for the record is euer triable by it ſelfe, and if there be ſuch a record it will appeare, though they find it not, and if there bee none, the finding of it is void. Thus may you ſee that a Monſtraunce de droyt lieth ſometimes although the King be intitled by double matter of record, if it ſo be that the parties tytle appeare by matter of record, or els it lyeth not. And yet Choke, Littleton, and Nedham, held opinion in H.4.E.4.7. that if it be found before the Eſchetor, that one was tenant in tayle of certain lands holden of the king, the remainder to another in fee, and that he in the remainder is outlawed of felony, and that tenaunt in tayle is dead without iſſue, where in deed he being tenant in tayle before the ſtatute De donis conditionalibus after that he had ſtue enfeoffed one W. in this caſe the ſayd W. ſhall ſhew this matter, and that the vtlagary was after the feoffement made, and ſo haue the lands out of the kings hands by a Monſtraunce de droit. But it ſhould ſeeme their opinion is againſt the law and the bookes before rehearſed, vnleſſe this feoffement were found by office, becauſe it appeareth that the king in this caſe is intitled by double matter of record. And note, that where the King is intitled but by office alone, there the party may haue his Monſtraunce de droyt, although his title be not found by office, aſwell as he ſhould in the like caſe if he were to take a Trauerſe, H.9.E.4.5. but otherwiſe it is where the king is

entitled by another record beside the office, which is not trauersable, there he shall not be receiued vnlesse the parties tytle appeare by matter of record. And note, that if the king haue committed the land ouer, he that sueth his Monstranc' de droyt must sue a Scire fac. against the committee, euen as the should vpon a trauerse, & as for taking the lands to ferm or for suing the Monstraunce de droyt during the tyme the heire in whose right the king hath seised is within age. Like law is to be vsed as is before declared vpon the title of Trauerse cap. 20.

Petition. Cap. 22.

PEtition is all the remedie the subiect hath when the king seiseth his land, or taketh away his goods from him hauing no tiele by order of his lawes so to do, in which cas the subiect for his remedy is driuen to sue vnto his Soueraigne lord by way of petition onely: for other remedy hath he not, as it hath bin sufficiently declared before vpon the 14. chapter of the kings prerogatiue. And therfore is his petition called a petition of right, because of the right the subiect hath against the king by the order of his lawes, to the thing he sueth for. And this petition may bee sued aswell in the parliament as out of the parliament, and if it bee sued in the parliament, then it may be enacted, & passe as an act of parliament, or els to be ordered in like maner as a petition that is sued out of the parliament, which is in this maner: first after the petition is endorced it shal bee deliuered to the Chauncellor of England, & then shall there be a commission awarded out of the Chauncery to find the right or title of him that sueth the petition, which being found by enquest, then

then he may enterplede with the king, and not before, as appeareth in P. 18. E. 3. f. 15. P. 4. E. 4. f. 23. H. 11. H. 4. f. 52. & P. 10. H. 4 f. 4. And if vpon ỳ said commission no title bee found for the partie, but onely for the king, yet the petition shall not abate, but ỳ partie shall haue a new commission in ỳ case, for the petition is but as void vntill the parties title be found by office, & is not to bee said depending, vntill that time, as appeareth in P. 3. H. 7. f. 13. Quære for hee sued a new petition in that case. And note ỳ when the petition is endorced, the partie must follow & pursue ỳ same according to the endorcement, or otherwise his suit is void, because the endorcement is his warrant therein, as appeareth in Petition 1. H. 18. E. 3. P. 22. E. 3. 5. & Petition 18. H. 46. E. 3. & therefore sometime bils of petition bee endorced & sent into the Kings bench or Common place, & not into the Chauncery, & that groweth vpon a speciall conclusion in his petition and a speciall endorcement vpon the same, for the generall conclusion is, que le roy luy fait droyt & reason, which is as much as if he had prayed restitution of that that he sueth for: And there vpõ such a general conclusion, the endorcemẽt is, Soit droit fait as parties which euer is deliuered vnto the Chauncellour, as is declared. But if the conclusion in the petition be speciall, & the endorcement speciall, then they shall proceed according to the said speciall endorcement. As for an example, ỳ king recouereth in a Quare impedit by default against one that was neuer summoned, in this case the party that lost cannot haue a writ of disceit, vntill such time as he haue sued vnto the king by petition for the said writ, & if in his petition he conclude, & pray that the king doe him right generally, now the Justices before whome the recouerie was had, cannot examine the deceit, without an originall Writ directed vnto them for that purpose, and yet before hee obtayned that Writ, his right shall bee enquired of by commission, but if he conclude specially in his petitiõ, ỳ

it may please his highnesse to commaund the Justices to proceed to the examination, which petition is endorced accordingly, then may they doe it without any such writ or cōmission to be sued, as appeareth in M.10.H.4.fo.4. So euer the following & pursuing of the thing must be according to thendorcement, for howsoeuer the conclusion in the petition be, the endorcement may bee alwayes as it shall please the king, as mee seemeth, & according to that the partie must pursue it. And note, that in euery petition where the king hath graunted the land ouer to another, a Scire fac. must be awarded against the patentee, like as it shall bee where a trauerse or Monstraunce de droyt is tended, which patentee if hee haue not the whole fee simple, but that there is a reuersion in the king, or that the king is bound to warranty, when hee appeareth vpon the Scire facias, he may pray a writ of search to bee awarded into the Treasory, to search what they can find for the kings title, as appeareth in H.9. Edw.4.fol.51. where Sottle saith, that euery petition must make mention of all the kings titles, for if it be found by the writ of search, that any be omitted, the petition shall abate: and the reason of it is, because that if on this suit of petition the king take an issue with the partie, which is found against him, his highnesse then shalbe concluded for euermore to clayme by any of the points contained in the said petition. And herewith agreeth the booke T.16.E.4.fol.6. But quære if search shall bee graunted vpon a Trauerse or Monstraunce de droyt, because the statute of Anno 14.E.3.cap.13. that concerneth search, doth speake only but of a petition, but to that it may be said, that the time of making of the statute there was no trauerse giuen. And Screne saith Petition 6.A.7. H.5. that search shall not bee graunted but where one sueth by petition. And note also that in euery petition, whether it bee sued in the Parliament or els where, or whether the lands remaine in the kings hands or not in the

kings

kings hands, but bee graunted ouer, yet Writs of search shalbe awarded to search the kings title ere the party shall enterplead wᵗ the king. And it appeareth in the booke of T. 16.E.4.f.6. before remembred, that vpon a petitiō ỳ kings patentee had ayd of the king: and there appeareth also, that if the king be not intitled by any matter of record, but without any title do enter into my land, whereby I sue vnto his highnesse by petition, that in this case no search shalbe granted, because no title can bee intended for the king in such case. Thus haue I opened and declared the maner of suing a petition, but to declare specially where it lyeth and where not, it were a long matter to entreat of. But generally, and by generall rules a man may briefly declare it, that is to say, in all cases where the partie hath a right against the king, and yet no Trauerse or Monstraunce de droyt will serue, there is he driuen to his petition. As for an example, where the king is intitled by double matter of record. Like law is where he is entitled by a record not trauersable, as take the case, the king recouered by assent, and without tytle, a straunger that hath good title shall not falsifie this recouery by a Trauerse or Monstraunce de droyt, but is dryuen to his petition, so it is where the king recouereth by erronious Proces, the partie shall not haue a Writ of error, but shall haue sued by petition for it, P.17.E.3.fo.31. So likewise it is if lands are holden of mee by knights seruice, a straunger brings a Precipe in capite of those lands against my tenant: recouereth by defaut, although by this recouerie I am not put out of possession of my Seigniorie, but ỳ the tenant holdeth of me as he did before, and also of the king by conclusion, yet in this case if the recouerer dye, his heire within age, & the king seiseth the ward, I am driuē now to my petition, for the ward, as appeareth in T.17.E. 3.37. for this is another thing than euer I was seised of. Also it is a generall rule, that where a strāger ỳ hath title cā

not enter vpon a cõmon person, but is driuẽ to his actiõ, ther he can haue no remedy against the king, but only a peticiõ: as take the case to be, It is found by office the kings tenant in chiefe died seised his heire within age, where indeed the said tenant had nothing but by disseisin done to mee, and I suffered him to die seised without any claime made, in this case I get no remedy by Monstraunce de droit or Trauerse, but am driuen to my petition. And so in al cases like where mine entie should be tolled, if the lands were in ỹ hands of a common person, as appeareth in M.7.H.4.f.33.T.9.H.4. f.5. Also where as ỹ king doth enter vpon me hauing no title by matter of record or otherwise, & put me out, & detaynes ỹ possession from me ỹ I cannot haue it againe by entry without suit, I haue then no remedy but only by petition. But if I be suffered to enter, mine entry is lawfull, & no intrusion: or if the king graunt ouer the lands to a straunger, then is my petition determined, & I may now enter, or haue my assise by order of the common law against the said straunger being the kings patentee, as appeareth in M.4.E.4.f. 22. & M.24.E.3.f.65.H.10.E.3.f.2. And a great difference is betweene this case & the case where the king is intitled by double matter of record, or such like, for in these cases notwithstanding the grant made ouer by his highnes of the lands to another, yet am I driuen still to my petition to the king, & haue no other remedy, M.7.H.4.f.21. but it is not so in this case: & the reason of this diuersitie is] because ỹ when his Highnesse seiseth by his absolute power, contrary to the order of his lawes, although I haue no remedy against him for it, but by petition for ỹ dignities sake of his person, yet when the cause is remoued, & a common person hath the possession, then is mine assise reuiued, for now the patentee entreth by his owne wrong & intrusion, and not by any tytle ỹ the king giueth him, for the king had neuer title ne possession to giue in that case: and therefore not like the other cases

ses before, where the king hath the lands by the order of his lawes, that is to say, by double matter of record, or such other like. And this appeareth in M.4.E.4.f.21.& 25.& M.24.E.3.f.64.& Trauerse 34.33.li.all. Like law is if I haue a rent charge out of certaine land, & the tenant of the land enfeoffeth the king by deed enrolled, now during the kings possession I must sue by petition, but if his highnesse enfeoffe a straunger, I may distraine for my rent vpon the stranger, & so is it in all the cases before, where a man may haue his trauerse, or Monstraunce de droit, if the lands be once out of the kings hands, the partie then may haue his remedy that the common law giueth him: for in all these cases the petion did lye only for the dignitie of his person, & not for ỹ right that he had to the possession of the thing. But if the king purchaseth lands holden of me, learne what remedie I may haue for my seigniorie during the kings possession: for Wilby saith in Assise 124.M.20.E.3. ỹ I haue no remedy in that case, & if his highnes make a feoffement of these lands to hold of himself, yet can I not distraine for my seigniorie, like as I might do in the case of the rent charge before, because there cannot be ỹ. seigniories of one self land, but am driuen to my petition in this case, for ỹ king vpon this feoffemẽt by order of his lawes should haue renued the seigniory in me, that is to say, to haue made the feoffee to hold of me of whō it was holden before, as appeareth in Petition 18.& 19. M.46.E.3.& M.17.E.3.f.59.& so hath it bin vsed alwayes wher his highnes hath lāds by forfeiture of treason hold of a cōmon person, if he make a feoffemēt of those lāds it must be Tenēdū of thē ỹ they were holden of before, as I haue opened vpō ỹ vij. chap. of ỹ kings prerogatiue: & so it is where ỹ time is deuolued to his highnes for a mortmaine: But that is giuen by ỹ statut de religiosis. Also if the king disseise my tenāt, during this possession I haue no remedy for my seignory but only by petitiō, & if ỹ king enfeffe my tenāt to hold

of his highnesse, yet haue I no remedy for my Seignioꝛie, but onely by petition. But if one hold certaine lands of me which are falsly found by office to be holdē of the king in Capite, & the king seiseth thē, & enfeoffeth my tenant therof to hold of his highnesse, in this case I may now distreine for any seignioꝛy, & am not out of possession, & these cases appere Ꝑ.32.E.3. Assise 122. & 124. Ꝑ.20.E.3. Auowry 113. & Ꝑ. 46.E.3.11. & the reason of the diuersitie is this, because that in ỹ last case my seignioꝛie was neuer suspended, but euermoꝛe had his being & ỹ notwithstanding the office, for it did not appertain to me to trauerse the office, & discharge the tenure, but that matter was left to my tenant to doe, & seeing he did it not, he hath charged himselfe of a tenure by way of collusion to the king as well as to me, but it is not so in the other case. Also it is to bee noted, that if the king seise lands by title of wardship, and make a feoffement thereof, in this case the heire need not to sue his petition, but may haue a Scire facias to repeale the said letters patents, because the king was deceiued in his graunt, as appeareth T.7.Ꝑ.4.f. 17. & Ꝑ.21.E.3.f.47. For there the king himselfe is in possession still till Liuery bee made, so the heire there hath no cause to sue by petition, & the king is bound to deliuer it vnto him in whose right he seised. Also note, that suit by petition can be to none other than onely to the king, for no such suit shall be made to the Queene oꝛ to ỹ loꝛd pꝛince, for these personages haue no such pꝛerogatiue, as it appeareth in Ꝑ. 21.Ꝑ.4.f.7. Ꝑ.10.Ꝑ.4. Scire fac.135. Ꝑ.10.E.3.f.26. & Voucher 110, Ꝑ.14.E.3. but though ỹ king be seised somtime in another bodies right, & not in his own, yet ỹ suit ỹ is to bee made must be by petition aswel as if hee were seised in his owne right, as appereth in 10.Ꝑ.4.f.4. And as I said in ỹ beginning, a mā shal haue his peticiō for goods aswel as for lands as wher the escheꝛ seiseth goods of one ỹ is outlawed, & hath accōpted for thē in ỹ exchequer, after thutlagary is reuersed in

in this case the party hath no remedy for his goods, but only by Petition. And this case you shall see in T.34.H.6.f.51. Howbeit Catelby & Hussy hold opinion to the contrary hereof M.1.H.7.f.7. And learne if a petition bee sued for lands and the plaintife be nonsuite whether it be peremptorie or not, because some say that that suite is as it were his write of right, and hereof see the booke H.11.H.4. fol. 52. & H.3.H.7.f.14.

¶ Where a Scire facias must be sued before a Liuery or Ouster le maine. Cap. 23.

IF the king be seised of a ward, and graunteth it durante minore etate, now when the heire commeth of full age, and sueth his generall liuery, hee needeth not to sue a Scire facias against the Patentee, because his estate is determined by the full age of the heire, and yet it may bee that the heire had forfeited his mariage vnto the Patentee and then he hath good cause to reteine the land till hee bee satisfied of the forfeiture. But the law shall not entend any such forfeiture to bee, and therefore there needeth no Scire facias to be sued. Like law is it, as seemeth if the king graunt the wardship for no time certaine, but quamdiu in manibus nostris fore contigerit, if hee make a speciall liuery vnto the heire being within age, there needeth no Scire fac' to bee sued, so is it where the graunt is but durante beneplacito nostro, but if the king haue land in ward, and enfeoffeth thereof a straunger, some thinke the heire needeth not to sue any Scire facias against the feffee but at his pleasure, and some other thinke he must, because his estate is not determined by the full age of the heire, as it is in the first case I put before. And it may bee y an auncester collater-

lateral vnto the child hath relẽsed with warranty which is descended, which the feoffee might plede, if he came in by Scire facias or els by the liuery the said warrantie is vtterly lost, & these cases appere P.7.H.4.f.17.21.& 32.et 41 M.10 H.6.f.20.& P.5.E.4.f.3.M.21.E.3.f.47.H.3 H.7.f.3. How beit me thinks it were wisdom for the heire to sue a Scire fac' to thintent that he therby with the kings helpe might repell the said letters patents, and bring them as it were, out of his way, which thing he may sooner bring to passe by the kings suite than by his owne. Also the heire when he sues liuery neede not to sue any Scire facias against him that hath the lands to ferme vpon the trauers, as appeareth in T. 1. H.7.f.27. for he hath no terme certain in the land but donec discussum fuerit, which words are become void after the heir is of full age, because it cannot bee then discussed without preiudice of the heire: and therefore void. Then further let vs see where he that sueth by peticion, or that tendeth his trauers or Monstrance de droit, shall sue a Scire facias, and where not. And as to that it is a generall rule that if the king haue graunted the wardship of the lands ouer for any terme certaine, or graunted any other certaine estate in the lands, he that sueth his peticion, Monstrance de droit, or trauerse must sue a Scire facias against the king Patentee in such case, but hee needeth not to sue any against the heire in whose right the king is seised of the land, because he that sueth doth not plead with the heire but onely with the king or such as hath the interest, as appeareth in 37. lib. ass. 11. Like law it is if the kings graunt be but Durante bene placito nostro, or that it be made hanging the trauers, peticion, or Monstrance de droit, in this case he that sueth, neede not to sue any Scire facias. And these cases appeareth P.5.E.4.f.3.& Briefe 260. P.13.E.3. And note that if the king grant the wardship to one which graunteth it ouer to the husband and to his wife, then must there a Scire facias

be

bee ſued both againſt the ſecond leſſe and the Patentée, but the wife neede not be named in the Scire facias. For there lyeth no voucher in this Scire facias. Howbeit in a writ of gard ſhe ſhould haue beene named, becauſe of the voucher, and this caſe is adiudged Briefe 618. P. 46. E. 3. & yet neuertheleſſe Newton is of opinion in 48. H. 6. f. 17. that no Scire facias ſhall be awarded againſt the leſſe in this caſe, but only againſt the kings patentée. And learne if the king grant but the body alone, whether there need any Scire facias to be ſued or no. Alſo note this caſe, that is to ſay, where the king ſeiſed for warſhip before office, and made a graunt ouer, and after office was found, whereby it appeareth ỳ the childes father in whole right the king ſeiſed, was but tenaunt for terme of life, the reuerſion to another in this caſe he in the reuerſion had an Ouſter le maine without ſuing any Scire fac' againſt the patentée, as appeareth H. 10. E. 3. f. 2. and at this day the caſe is more ſtronger for ſuch a graunt were void, becauſe it is before office. And therefore vpon any ſuch void graunt there neede no Scire fac'. And in 24. E. 4. f. 7. it appeareth that one had trauerſed an office which was ſent into the kings Bench to trye, and had forgotten to ſue his Scire facias, and yet he was ſuffered to goe againe into the Chauncery to pray a Scire facias vpon the firſt trauers, for it was ſaid that the Chauncery is a court of conſcience, and for that cauſe the thing that was there amiſſe may be reformed at all times. And learne if this Scire facias bee ſued againſt many, and one of them dyeth, whether this ſhal abate the trauerſe, Monſtrance de droit, or petition, whereupon it is ſued, or els the Scire facias. It ſeemes that nothing ſhall abate but the Scire facias, becauſe no mencion is made of the tenaunt, neither in a trauerſe, Monſtrance de droit, or a petition. And of this matter ſee the bookes in H. 7. H. 4. f. 33.

Ouſter

Ouſter le maine. Ca. 24.

OVſter le maine is the iudgement that is giuen for him that tendreth a trauerſe or ſueth a Monſtrance de droit or petition, for when it appeareth vpon the matter diſcuſſed, that the King hath no right nor title to the thing hee ſeiſed, then iudgement ſhall bee giuen in the Chauncery that the Kings hands be amoued, and thereupon Amoueas manum ſhall bee awarded to the ſchete for which counteruailes as much as if the iudgement were giuen that hee ſhould haue againe his land as appeareth, in in M. 24. E. 3. 65. and this iudgement ſometime is giuen in the Kings Bench and not in the Chauncery, and that is in caſe where the parties deſcend to an iſſue, then for the tryall thereof, they of the Chauncery muſt award a Venire facias returnable in the Kings Bench at a certaine day, at which day, notwithſtanding that the Shiriffe returne not the writ, yet the Alias venire facias ſhall not bee awarded out of the Chauncery, but out of the Kings Bench for there and no where els it is recorded, quod vicecomes non miſit breue, as appeareth in P. 13. E. 4. f. 8. And when the iſſue is found for the party, they of the Kings Bench ſhall giue iudgement and awarde an Ouſter le maine without ſuing for the ſame in the Chauncery as appeareth in M. 21. H. 7. f. 5. and 29. hb. aſſ 43. and yet the record of the iſſue that was tryed was not ſent thither but only the tranſcript therof, but what thane the iudgement is to be giuen vpon the verdict which is there of record, and when both courts be courts of the common law and the Kings Courts, they vſe not to remaund any thing to the place from whence it came, but to giue iudgement there where it is tryed, and Shard ſaid that when a record comes once into the Kings Bench, it ſhall neuer goe from theice.

Alſo

Alſo note that ſometimes there goeth an Ouſter le maine as well to the Kings patente as to the Eſchetour, and that is where the King hath graunted the thing that hee ſeiſed to any other, but notwithſtanding that there goe ſuch writs of Amoueas manum both to theſchetor and to the partie, yet the King is out of poſſeſſion as ſoone as iudgement is giuen in the Chauncery, not forcing whether any of theſe writs bee awarded or not either to theſchetour or to the partie: and thereupon the partie for whom iudgement is giuen, may enter forthwith into the lands, and ſhall bee ſaid no intrudor, as appeareth in H. 10. Ed. 3. fo. 2. And the reaſon of it is becauſe the iudgement tyeth not the King to the deliuerie of the poſſeſſion, but onely to leaue his hands of the poſſeſſion. And note that if a Diem clauſit come to the eſchetour, hee by vertue of that writ, before hee make any enquirie, may ſeiſe the land for the Kings behoſe, which after hee hath once ſeiſed, if after by office no tytle bee found for the King, then the party that ought to haue againe the land, may ſue for the ſame in the Chauncery where the office is returned, and then Amoueas manum ſhall bee awarded, for vntill the making of a ſtatute at Lincolne Anno 29. E. 1. called the ſtatute De eſcaetoribus, the party had no remedie in ſuch caſe, but onely to ſue vnto the King himſelfe, as it appeareth by the ſaid ſtatute, and now that ſtatute giues an Ouſter le maine vna cum exitibus, Howbeit this Ouſter le maine may not bee ſued by parcels no more than a Liuery, and therefore if diuers writs or commiſſions bee awarded into diuerſe counties, to enquire after the death of A. B. and in one countie it is found that hee holdeth nothing of the king but in ſocage, and in the ſame countie and by the ſame enqueſt, it is found that hee holdeth of another by knights ſeruice, yet ỹ Lord by knights ſeruice getteth no Ouſter le main vntill ỹ other enqueſts be alſo returned in, Cauſa quâ ſupra

For

For if hee should, then he should haue it for the lands & not for the bodie, and so should haue it by parcels, for the body may not be deliuered as long as there is any enquest to be returned in. And the reason of it is, because that enquest may finde a tenure of the king by knights seruice in chiefe in which case his highnes ought to haue the whole lands, and if it bee but a common tenure by knights seruice, yet his highnes at the least, ought to haue the preferment of the bodie, yea and though the Lord of whom it is found to bee holden bee the Archbishop of Caunterburie, or such a one against whom the kings prerogatiue will not hold for the lands, yet because it holdes for the bodies, hee getteth no Ouster le maine vntill all the offices be returned in, for the reason before made, as appeareth in liuery 29.H.16.E.3. Howbeit by fauour and grace of the court the archbishop had his Ouster le main before the other offices returned. And so note in times past men haue sued Ouster le maine vpon a seisin made for the king, although the office found afterward did not entitle his highnes. Howbeit at this day it is not so vsed, for the escheator will not seise vnlesse there be an office found, although hee might lawfully do it by the words of the writ Diem clausit, which vsage I do nothing mislike, considering the great trouble it auoideth, that might els ensue to the kings subiects. And note that in all cases where the king is seised or in possession of the land by office or any other matter of record, his highnesse seisin cannot bee deliuered out of him vntill such time an Ouster le maine be sued, as if the king be seised by office of the land, of any Idiots or for annum, diem & vastum of lands of any that is attainted in these cases he that should haue these lands after the kings title determined, must sue an Ouster le maine, otherwise it is where the king is not seised of the land, but onely entitled to ỹ profits, as of the lands of him that is outlawed in a personall action, or of clerke conuict or such like, there

neede no Ouster le maine to be sued, as appeareth in Trauers 48.M.4.E.3.f.47. and 9.H.6.f.20. and if the lands which is seised into the kings hands, bee holden ioyntly by many, yet euery one of them by himselfe may sue his Ouster le maine of his owne part without his companions, as appeareth in T.2.H.4.23.

Liuery. Cap. 25.

The maner of a suing of a generall liuery doth partly appeare in the title of Liuery in the great Abridgement of Iustice Fitzherbert An̄ 12.H.4. Liuery P. 4. and Anno 21.R.2. Liuery P.5. Where it is declared that after the heir that was in the kings ward is come to full age, then a writ de Etate probanda shall be awarded vnto the Shiefe of the shire where the said heire was borne, to enquire of his age, in which case it is required by the law that euery one that shall passe in that enquest shall bee of the age of xlviij. yeares, meaning thereby that they and euery one of them should bee of full age at the birth of the childe, because that such haue better knowledge and remembrance than other of lesse age haue, and that the heire that is in ward enforme the enquest by certaine signes and tokens of the time of his birth, as to say, that that yeare there was a great tempest or a great plague, or such like, which signes so giuen in euidence, shall bee returned by the Shiriefe as well as the principall matter. But whether it bee requisite to haue twelue, or a lesser number in the said enquest or not, learne, for some thinke that any number from two vpward will serue, because the tryall is by proues, and see the new Natura brevium folio.253.

C.

C. where it appeareth that this writ of Etate probanda was directed to the escheatour of the county where he was borne and not to the shirife. Howbeit note alwaies that they where the land is, shall neuer enquire of this matter, vnlesse the birth and land were both in one shire, for they haue enquired of it alreadie, that is to say, when they did finde the first office. Thus when they haue found his age, that inquest shalbe returned into the Chauncery, and from thence shall bee awarded a writ to the Lord Keeper of the priuie seale, signifying vnto him that the heire is of full age, and vpon that a priuie Seale shall bee directed to the Chamberlaine of England to receiue his homage, which beeing receiued, the said Lord Chamberlaine shall certifie the Lord Chauncellor by writ of the receipt thereof, and then shall the heire haue his liuery. But it seemes that if the heire were neuer in ward but of full age at the death of his ancestor, and so found by office, that then he shall haue liuerie as is declared vpon that office onely, without suing any writ of Etate probanda: for the writs of liuery in this case make no mention of any Etate probanda as they doe in the other case, but if the heire bee within age and in the Kings ward, and after when hee comes to his full age other lands descend vnto him, which the King also seiseth by an enquest that findes the heire of full age, yet this notwithstanding hee must now sue an Etate probanda vppon both offices, as appeareth in 9.13.H.4.6. And the reason of it is, because the finding of him of full age is but as void, as long as there is a record wich found him within age, to the which record the king might cleane vnto as ỹ best record that maketh for him vntill such time the contrary thereof be proued by the writ of Etate probanda. Howbeit at this day the Statute 2.3.E.6. hath much abridged

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the fées that haue béene giuen vpon the ſuit of a generall liuerie, namely for liueries to be ſued of clere yerely value of v. pound or vnder and that it may be ſued without any office to be found. But I do not ſée that the maner of the ſuit is in any other point altered or changed by ỳ ſaid ſtatute but it remaines as it did before. And that ſtatut alſo giueth men licence to ſue a generall liuery of landes not exceéding the cleare yearely value of xx. li. Whereby I ſée no let, but that a man may ſue his generall liuery for lands aboue the yerely value of xx.li. as he might haue done before the making thereof, for this ſtatut is not contrary to any law that was before in that point, ſauing that a generall liuery vnder the value of xx.l. cannot paſſe or be ſued, if he haue not firſt his warrant from the maſter of the kings wards & Liueries, Surueior, Atturney, and generall Receiuour, or three of them, ſigned and ſubſcribed with their names & hands: Thus may you ſée the maner of the ſuing forth of a generall liuery, which liuery may not be ſued by parcels, as I haue ſaid before, but intirely, that is to ſay, of all the lands ỳ king is or ought to be ſeiſed of in his right that ſues the liuerie. And therefore if the heire ſue liuerie but of parcell of that that is found by office, or if the anceſtor were ſeiſed of other lands then are found by office, if the heire ſue his generall liuery before an office thereof bée found, omitting thē in the liuery, the liuerie is miſuſed, as appeareth in Liuery 28.M.12.R.2.fo.44.E.3.fo.1.& 25. and H.2. H.7.fo. 12. and therefore it behoues the heire before he ſue his liuerie, to cauſe an office to be found in euery ſhire where his anceſtor had any lands. And this intire liuery is intended as well of lands holden of other Lords, being in the kinges hands, as of the lands that are holden of the King. And therefore if a man hold of the king in chiefe in knights ſeruice, and of other Lords in ſocage and die, his heire being a daughter within the age of xiiij. yéeres, in this caſe when the ſaid daughter commeth to the age of xiiij. yéeres, ſhe getteth no liuery of the lands holden in ſocage, but muſt

tary till she bee of the age of xvi. yeres, that she may then sue liuerie of the whole, as it appeareth in Liuery 19. H. 35. H. 6. But note that in some cases one shall haue liuery of parcel, and that is where lands discend to diuers daughters, & one is within age, and the other of full age, now she of full age shall sue liuery with a partition of her part of all things that are seuerall: and this liuery is well sued, although it bee not of the whole lands discended, but if there be any things in the kings hãds not seuerable, as aduowsons or such like, that must so remaine still vntill the other be of full age, as appeareth 9. H. 38. H. 6. fo. 9. And so note, that in a generall liuerie, if any thing be omitted, the liuery is missued: And therefore some say, that after such a generall liuery had, there shall be a writ awarded to inquire of the concealment, that is to say, whether the heire hath left out of his liuery or not, any of the lands that were his auncestors, which writ is called Breue de terris concelatis. And see the statute 38. E. 3. cap. 4. that giues the rents to them that sue liuerie, when ỳ rent day commeth, although it cõmeth next day after their liuery. And looke more for liuerie in the expolition vpon the 3. chapter of the Kings Prærogatiue.

Reseiser. Cap. xxvi.

Reseiser lyeth where a generall liuerie or Ouster le maine is missued by any person or persons vnduely and not according to the forme and order of the Law, or vpon an office which is sufficient in the law for the party to haue liuery or Ouster le maine. In this case the king may reseise the lands without suing any proces against any party, and shalbe answered of all the mesne issues and profits receiued and taken from the time of their first seisin, if it were sued out of his hands by an Ouster le maine, an if by a liuery, then but from the time of the liuery. And the party that hath pursued it shal be accompted none other than as an intruder vpon the kings possession after office, in which case no freehold shal bee adiudged in him, nor his

his wife of that poſſeſſion ſhal haue any dower, as appeareth in Liuery 3. P. 18. E. 3. H. 21. E. 3. f. 1. and H. 24. E. 3. fol. 63. But if one haue Liuery or Ouſter le maine by due proces, and after a Record is found in the Treaſorie, or elswhere, or an office in the countrey, whereby the king is intitled of a title growne vnto him before the ſuing of the ſaid Liuerie or Ouster le maine, although the partie ſhould haue had no Liuerie or Ouſter le maine, in caſe the ſaid Records had then appeared, vnleſſe he could haue auoided the ſaid Records: yet foraſmuch as they did not then appeare, he ſhall not be now after Liuery or Ouſter le maine caſt out of his poſſeſſion without a Scire fac' to bee purſued againſt him, for ſo hath the ſtatute prouided that was made Lincolne in the 29. yere of E. 1. called *Stat. de Eſchaetoribus*, the tenor whereof is this. Ad Parliamentum Regis apud Linc' tentum in octabis ſancti Hillarij anno regni ſui xxix. p conſilium Regis concordatum eſt coram dño Rege, ipſo rege conſentiente, & illud extunc fieri & obſeruari præcipiente, de conſilio venerabilis patris W. de Langton Couenſ & Lichf. Epiſcopi tunc eiuſdē Reg. Theſauſ Ioh. de Langton Cancell', & aliorum de conſilio tunc ibidem præſentium, & coram rege, viz. Cum inquiſitiones per Eſchaetores ſuos captæ per quecunque breuia regis in Cancell' ipſius domini regis fuerint retorn̄, & per eaſdem inquiſitiones compertum fuerit, quod nihil tenēt de ipſo dño rege, per quod cuſtod̄ trarum & teñt huiuſmodi ratione inquiſitionis in manū dñi regis per ipſos eſchaet̄ captæ, ad ipſū dñm Regem null' modo pertineant: quod ſtatim & abſq̄ dilatione aliqua mādet̄ per breue dñi Regis de cancell' p̄cipiend' qd̄ Eſchaet̄ de trīs et teñtis ſic in manum dñi Reg. per ipſos capt̄, de tempore quo terræ & teñ ill' in manu dñi reg. extiterint, integrē reddant ipſi vel ipſis, cui vel q̄bus per inquiſic' prius per eoſdem Eſchaet̄ captas compertum fuerit, quod trē & teñta illa debeant remanere: Saluo ſemp dño regi, qd̄ ſi poſtquam Eſchaet̄ ſui manus amouerint per breue ipſius dñi Reg. vt p̄dict̄ eſt, aliqd̄ contigerit inueniri in Cancellaria, vel ad Scaccarium, vel alibi in cu-

ria ipſius dñi Regis, per q̄ cuſtodia terrarum aut tenẽt eorundem, de quibus eſchætores manus ſuas amouerint in forma prediẽ dño regi pertineant, quod ſtatim præmuniat̃ ille in cuius ſeiſina tenta præd' fuerint per breue de Cancell', q̄ ſit ad certum diem coram dñ Rege vbicunque &c. oſtenſ. ſi quid pro ſe habeat vel dicere ſciat, quare dñs Rex cuſtodiam earundem terrar̃ et tenẽtorum habere non debeat, iuxta formam euidentiarum ſeu memorandorum pro ipſo Rege cõpertorũ. Et ſi venerit, & pro ſe oſtendat quare eadem cuſtod̃ ad Dñm Reg. non pertineat, aut pertinere non debeat, immò quod remanere ſibi debeat, recedat quietus, & cuſtodiam ſuã retineat. Si autem p̃monitus non venerit, vel venerit & nihil ſciat dicere, quare rex cuſtod' illam haber' non debeat, ſtatim reſeſienẽ t̃ræ & tenta ill' in manum domini Reg. nomine cuſtodiæ, tenend' vſque ad legitimam ætatẽ hæredũ eorundẽ, ſicut ſuperius dictum eſt. Et ſi compertum fuerit per inquiſitiones per Eſchaetor' ſuos factas & returnatas, quod cuſtodia earundem t̃rarum & tenẽt̃ in inquiſitionibus contentorũ, & in manum dño ſeiſitorum dñi regi remanere non debeat, quod ſtatim mandetur Eſchaetoribus q̄ manus ſuas amoueant & exitus integré reddant &c. Eodẽ modo ſi poſtea compertum fuerit per euidentias & memoranda in Cancell' aut Scacc', vel alibi, vt predictum eſt, quód dñs rex cuſtod̃ eorum habere debet, reſpondeat̃ ipſi dño regi de exit̃ integré per manus illorum qui terras aut tenementa illa tenuerint a toto tẽpore, poſtquam terræ et tenemẽta illa primó in manum ipſius domini regis per Eſchaetor' ſuos capta fuerint per breuia ſupradicta: & iſte modus de cætero obſeruet̃ in cãcell, non obſtante quadã ordinatione nuper per dñm Regem facta de t̃ris & tenẽt̃ in manũ ſuam per miniſtr ſuos captis & non liberandis, niſi per ipſum dñm Reg. & prout cõtinetur in quadam diuidenda per ipſũ Regem & Cancell' facta, Cuius vna pars penes Cancellarium remanet. *Stat. de Eſchaet. edit. 29. E. 2.*

Alſo a yeare before the making of this ſtatute, was there another ſtatute made, intituled Articuli ſup chart. **which in the 19. cap. thereof, ſaith in this wiſe:** De reſcheiue la ou leſchetor

hetor, ou le vicont ſeiſont en le maine le Roy tres la ou il nad reaſon de ſeiſer, & puis quant trouue eſt la non reaſon, les iſſues de meſne temps ont eſtue ceo en arere retenus, & nad rendus quant le roy ad le maine ouſte, vont le roy que deſormes, la ou terres ſont iſſint ſeiſies, & puis le maine ouſte, pur ceo q̄ il ny ad reaſon de ſeiſier ne tener, ſoyent les iſſues pleinement rendus a celuy a que la terre demurt, & ayoyt le dam̄ reſceue. By this ſtatute it plainely appeareth, how that before the making thereof there was no Ouſter le maine graunted vna cum exitibus, although it might neuer ſo plainely appeare the King had no cauſe to ſeiſe. Howbeit that miſchiefe is now remedied by both theſe ſtatutes. Alſo by the one of theſe ſtatutes it appeareth, that the Ouſter le mayne in ſuch caſe might not be graunted without ſuing to the king himſelfe, which is alſo remedied by this Statute de Eſchaetoribus, which ſtatute, although it make no mention of liueries, but onely of Ouſter le maine, yet liueries are taken to bee within the compaſſe and prouiſion of the ſame. And where the letter goeth onely to the caſes where the King ſeiſeth before office, and afterward the office that is found doth giue his Highneſſe no title, that there the party may haue his Ouſter le mayne, making no mention of an Ouſter le maine to bee graunted vpon any petition, Trauerſe, or Monſtraunce de droyt, as indeed a Trauerſe was not in vſe at that time. Yet men by an equity extend this ſtatute De Eſchaetoribus both to the one and to the other, becauſe the ſtatute is beneficiall, as appeareth 9. Edw. 4. 51. And in diuers other bookes. And Yelverton there ſayeth, that if after liuery or Ouſter le mayne an office bee found, which intitleth the King of a title growne vnto him ſince the Liuerie, or Ouſter le maine graunted, that in that caſe this Statute notwithſtanding, the King may reſeiſe without a Scire facias, for the words are onely where a Record or an Office is found, that maintaineth the title whereby the king firſt ſeiſed. Howbeit many hold opinion againſt him, and ſay, that it was in the ſelfe ſame miſchiefe the ſtatute was made

for, Tamen quære, for this statute De Eschaetoribus should seem to be meant only to remedy that that was a mischief at common law fore the making of the said statut, as where there was no record found at the time of the liuery, or Ouster le maine sued to let or hinder the partie from suing of their said liuery or Ouster le main, but afterwards was there found such a record, now this notwithstanding would the king reseise and put the party from his possession without aunswere to any proces sued against him, whereupon hee might answere, and so driue him to sue by petition, and make him render all the mesne profits, which was a great mischiefe and hinderance to the party: for remedy whereof this statute was made, but the like mischief or hinderãce is not where the king is intituled by a title growne since the liuery or Ouster le main, for there the party shal not answere the profits but from the time of this title growne. And also the king doth him no wrong, for it stands with and affirms the liuery or Ouster le maine, & the king thereby makes not the party an intruder as he doth in the other case, & it ẏ said Yeluertons opiniõ should not be law, they should make that the king could not seise vpon an alienation without licence made & found by office since the liuery or Ouster le maine sued, which were no reason, & therfore I think the said Yeluertons opinion should preuaile in this case. And to the same intent & effect be those bookes ẏ I can find, for I can find no Scir. fac' sued, but in cases of a title grown before ẏ liueries, or Ouster le main, & therefore in Scire facias sued vpon this statute against the party that had liuery or Ouster le maine, being tenant of the land at ẏ time of Scir. fac' sued, he was deemed in the selfe same plight and course against the king, as he was at the time of the suing of his liuery or Ouster le main, for where he had made a feffement by licence, & taken an estate againe ioyntly to him & other, yet this Scire facias did lie against him solely, & did not abate for the ioyntenãcy. So was it aiudged a Scire facias sued vpon this statut, ẏ the partie must maintaine the title wherby he hath liuery or

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Ouster le maine, and must maintaine it so, that it is and was a good title & sufficient to haue liuery vpon, notwithstanding any record that is now found: as take the case to be this, one hath deliuery as sole daughter & heire, and after by office it is found that she hath a sister, wich ought to haue had liuery with her, whereupon a Scire fac' is sued against the partie that had liuery, to come & shew why the land should not bee reseised, if she come and will say that they be daughters by seueral venters, and that this land was giuen to her father & mother in special taile, & so ought she to haue the liuery, as she had, ẏ is to say, soly, this plee will not serue hee because it doth not maintaine the liuery: for how could she haue had liuery solely, vnlesse this matter had bin so found by office. For if this second office had appeared before the liuery, she could not haue trauersed it, vnles she had made title, and then title can she neuer make against the king, as heire, vnlesse the said title be first found by office. Wherefore no more then she might trauerse the said office, if it had bin foūd before liuery, no more may she trauerse it now in this Scire fac' after liuery, as it appeareth 30. lib. ass. 28. and so note that the record cannot be trauersed in this Scire fac' in no case, vnlesse it were trauersable before liuery or Ouster le maine. Also in the new Natura breuium fo. 260. & in H. 5. H. 5. 2. I finde a Scire facias sued vpon the statut against him that had liuery, because an office hath found another to bee neerer heire to the ancestor that dyed, than was he that sued liuery. So alwaies as farre as I can find, it is sued vpon a record that disproues the liuery or Ouster le maine, and not vpon any that affirmes it, whereby I suppose that Yeluertons opinion is law, as is before declared. And it seemes that by this statute the king must sue a Scire fac' although ẏ record or title ẏ is found for him be found within a yere after liuery or Ouster le main sued. And learne whether Assise lieth against the Eschetor that seiseth without a Scire facias, in cases where a Scire fac' should be sued, for by the statut of M. 1. c. 24. assise lieth against him in cases where

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he seised any lands by colour of his office, without speciall warrant or commaundement, or certain authoritie that belongeth to his office so to doe. And learne whether the king by that seisure hath any possession, for if the king seise without a Scire fac', where he ought to sue a Scire fac', the party hath no remedie, but to sue vnto him by Petition, euen as he should doe, if his Highnes had seised any other lands of his without cause. Howbeit the king by such a reseiser vndoeth not the parties possession, so that he shall be said an intruder from the time of liuery, or Ouster le maine sued, as it doth in case the reseiser had bin vpon a Scire facias, wherefore in such case although the party cannot be suffered to recouer his possession against the entrie vpon the king, yet when the king graunts it ouer, he may now enter or haue assise, as appeareth 24. E. 3. f. 64. & 43. li. ass. 19. Also note that this statute that giues the Scire facias extends but vnto him or them that haue liuery or Ouster le maine, or any other claiming by them. For if after liuery or Ouster le maine sued, a stranger by an eigne title in disaffirming the tenants interest enter as heire vpon him, or recouer by assise of Mordancester, or any other action ancestrel against him, & is entred into the land as heire, now because the lands are holden of the king in chiefe, his highnes may seise the said land for primer seisin or title of wardship, as the case doth require, without any Scire fac', as appeareth in H. 21. E. 3. fo. For it is not to be said now a reseiser, because against him there was no seiser made of the said lands before. And learne & inquirie if he that misuseth the liuery be within age, whether the king shal reseise in that case, as he shal do if it were misued by one of full age: as take the case to be lands, are holden of the king in socage in capite, now the liuerie is sued within age, that is to say, at the age of 14. yeres, whether in that case the misusing of the same shall be a cause of reseisure or not see the booke thereof Liuery 28. T. 12. K. 2. The words of the Statute bee further, that if any Record be found in the Treasury, or elswhere, that vpon this Record a Scire facias

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ſhalbe awarded. But that is to be vnderſtood in this maner, that firſt the tranſcript of the ſaid Record ſhalbe by writ remoued into the Chauncery, and then out of the Chauncerie ſhall there be a Scire facias awarded, and not out of the Treaſorie, as it appeareth 21. li. all. 15.

Iſſues meſne. Cap. 27.

NOte that if the king haue a title, right or intereſt to any lands or tenements, his highnes when hee ſeiſeth ſhalbe anſwered of all the meſne iſſues and profits from the time of the ſaid title, right or intereſt growne, and whether it be a right of Entry, or title of entry, it maketh no diuerſitie in the kings caſe: as for an example, The king entreth for a condition broken, his highnes ſhalbe anſwered of al the iſſues and profits ſince the condition broken, & in that caſe a common perſon ſhall not haue the iſſues and profits but from the time of his entry 18. Aſſiſe 18. Entre cong. H. 19. E. 3. Like law is it, if the kings tenant alien in Mortmain, and the king entreth, but otherwiſe it is, if he enter for mortmaine in lands not holden of him vpon a title reuolued vnto his highneſſe in default of other Lords, P. 41. E. 3. f. 31. The ſame law is it where his highneſſe is intitled to ſeiſe for that the lands are of his foundation, and alienes contrarie to the ſtatute of Weſt. 2. cap. 41. which giues the writ of Contra formam collationis: In this caſe his highneſſe ſhall be aunſwered of all the meſne iſſues growne from the time of the alienation, as appeareth in Forfeiture 18. H. 46. Ed. 3. And note alſo, that if the King make any graunt which is not ſufficient in the law, or is deceiued in the making of the ſame, by reaſon it was made vpon a falſe ſuggeſtion, in this caſe if his highneſſe doth reſume this grant, and annul it Iure Regis, as hee may, hee ſhall then bee aunſwered of all the meſne iſſues and profits which were loſt by reaſon of the ſaid inſufficient grant, as appeareth P. 11. H. 4.

H.4.f.5, but if his highnes be intitled to any lands nomine districtionis, there his highnes shall not be aunswered of the profits, but from the finding of the title, as in case where the kings tenant in chiefe alieneth without licence, and an office is thereof found, in this case his highnes shall not be answered of the profits from the time of that alienation, but only from the time of the finding of the office, or from the time of a Scire facias returned, where the alienation is of record, and hereof see the booke P.8.E.4.fo.1. Like law is it, where his highnes is to seise the lands of his widow that hath married her selfe without his licence, 40.li.ass. 36. And note, that where the king is to be answered of the meane issues and profits perceiued & taken of any lands which haue come to sundry hands since the kings title first growne to the same, there euery one of them that haue sunderly perceiued and taken the profits, shall answere for his owne time, and not one for all, as it appeareth in the booke 46. before remembred. And note also, that by the statute of W.2.ca.32. it is prouided, that if any spirituall man bring any real action and recouer, that the land recouered shal remaine in the kings hands, vntill such time as it be sued out of his hands by him that recouered, or els by the chiefe Lord, and in the meane time the Shirife shall answer the king in the Exchequer of the profits, by which statute, whether the collusion be found, or not found, yet the king shall haue the meane issues, as it is thought T.20.H.6.f.38. So is it in a writ iudicial of deceit brought against any, the king shall haue the issues growne from the time of the first iudgement, vntill iudgemēt be giuen in the said writ of deceit, but hereof note this difference, that in a writ of deceit vpon a recouery in a Precipe quod reddat of land where the proces was a Grand cape, if the plaintife recouer, he shal recouer the land and his damages, but not the issues of the land since the first iudgement, because the king shal haue them by the Grand cape, & the Shirife accomptable of them, Quod vide titulo Disceit in Fitz.33.& 46.P.12.R.2.P.2.E.3.H.8.E.3.f.7.& T.50.

E. 3. f. 18. Contrarie law is it if there lye no graund cape in the action, as if the recouery be in a Scire facias, as it appeareth H. 17. E. 3. f. 12. H. 41. E. 3. fo. 2. a. 43. E. 3. f. 32. & H. 8. H. 6. fol. 5.

Sometime the king recouereth of the iſſue in the aduowſons of an eſtrangers title, as if the huſbād being the kings tenant vpon a falſe ſuggeſtion purchaſeth licence to alien, and to make eſtate to him and to his wife, and ſo doth, and afterward dieth, the wife holdeth her in by title of Surui-uor, and occupieth, now vpon a Scire fac' againſt the wife, his highneſſe ſhalbe anſwered of all the meane iſſues ſince her occupying of the two parts of the land, and the third part he occupieth and alloweth for her dower, 40. lib. all.

P. 36.

FINIS.

An Expoſition of the Kings Prerogatiue, collected out of the great Abridgement of Iuſtice FITZHERBERT, and other *old Writers of the Lawes of England*, by the right Worſhipfull Sir WILLIAM STANFORD Knight, lately one of *the Iuſtices of the late Queenes* Maieſties Court of Common Plees.

Whereunto is annexed the Proces to the ſame Prerogatiue appertaining.

LONDON
Printed for the Company of Stationers. 1607.

Cum priuilegio.

An Exposition of the Kings Prerogatiue, collected out of the great Abridgement of Iustice FITZHERBERT, and other old Writers of the Lawes of England,

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LONDON
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Cum priuilegio.

To the right honorable, Sir Nicholas Bacon *Knight, Lord Keeper of* the great Seale of England, Richard Totell *wisheth health and long life, with in-* crease of honour.

NOt long sithens, right Honourable, & my especiall good Lord, there was deliuered vnto mee a Collection of the Kings Prerogatiue, which Maister Staunford had gathered and dedicated vnto your honor: which work because it is thought wel of by the Sages of the law, & wel worthy to be printed, I am therfore the bolder to put it in print & publish the same. And although the said master Staunford very shortly after that hee had dedicated the same booke vnto your Lordship, were for his wisedome, grauitie, learning, integritie, & sincere dealings, aduaunced to bee a Iudge in the chiefe Court of this Realme for common plees, and for his good seruice therein was by iust de-

sert made Knight, and albeit that your Lordship also sithens that time haue atchieued the place, title and degree of high honor by the iudgement & calling of the Queenes most excellent Maiesty: Yet I haue printed the Epistle dedicatorie of the said worke, in the same termes that the Authour thereof vsed, and with the same stile that your honor, & both he thē had, whē he dedicated the said worke vnto your Lordship, as a monument and token of the mutuall and long continued amitie betweene you: most humbly praying your Lordship to accept in good part, according to your accustomed goodnesse, this my boldnesse with your honour, and to pardon the same.

This 26. day of Nouember.

Your honours most bounden

Richard Tottell.

Gulielmus Stanfordus Nicholao Bacono Regiæ Maiestati à Tutelarum Procuratione S. D. P.

QVanquam Anglicanę leges, (amice singularis) haud minorem merentur laudem, quam Iudex Fortescueus, libro de earum laudibus conscripto, eis tribuere videtur: tamen quoniam earum cognitio tam procul nobis dissita sit, profectio ad eam tam supra modum longa ac operosa, tum vię & semitæ tam asperæ, tam salebrosæ, tam inamœnæ sint, vt ad sui aditum paucissimos inuitet, quam plurimos absterreat, vel potius auertat: Optatem in tanta iurisperitorũ turba, quam Anglia nunc habet, aliquid excogitari posse, leuandis legum Studiosis, pro longo isto ac molesto itinere, vt propiore ac commodiore via ducti, valerent & proficiscendo & absoluto itinere, alias degustare literas: quibus non solum legalem scientiam multum illustrarent, sed & munia eis a Regia Maiestate mandata, tum pulchriùs, tum honorificentius administrarent. Id quod (meo iudicio) commodissimè fieri possit, si tituli, in magna (quam vocat) Fitzherberti Epitome, vel a Iudicibus nostris, vel ab alijs legũ peritis, sedulo forent euoluti atq; elaborati, hoc est, omni titulo, in classes ac ordines distributo, singulis eorum actis ac causis certæ legum regulæ ac Maximæ præsiderent. Exempli gratia. In Breuis titulum cadere possunt hæc, videlicet, Forma, vitiosa Nomenclatura, seu personæ, seu vici, Eadem res bis petita, Obitus vel actoris vel rei, Nominis alterutrius partis pendente lite mutatio, cæteraq; huiusmodi, quæ nunc nimis longo titulo sparsa tam tumultuarie reperiuntur, vt multo maiorem tum eruditionem, tum sudores, tum vigilias exigat eorum distributio, quàm rectè distributa ediscere. Et tamen non possum committere, quin tantæ epitomes scriptorem, vel

 amplis-

the second office is not voide, for there the heires found by both offices were of full age. And yet that notwithstanding they enterpleaded. And so is 11. E. 3. E. 4. f. 4. where it is said, that if by one office the heire is found within age, and by an other office an other is found heire, and of full age, that in this case they shall enterpleade, but note before the childe come to his full age. And *Townsend* Justice saith, in 21. H. 7. fol. 4. That if by diuers offices, it be seuerally found heires, and within age, now the king shall keepe the lands till their full ages, and then they shall enterplead, and if they die before enterpleader, their heires within age, seuerall *Dowers* shall be awarded, that is to say, for euery heire one, and by the same being found seuerally heires to their auncestors, they shall enterplead at their full ages, like as their auncestors should haue done if they had liued, and if the dying of any of them were without issue, and the other found to be his heire, then is the enterpleader determined. Thus may ye se how bookes dary in this matter, and yet by the way note this difference, that is to say, where by the first office the heire is found within age, and where of full age, for by these bookes it should seeme, that if he be first found within age, notwithstanding that by an other office, an other is found heire, and of full age, yet he shall not enterpleade with the other, till he be of age. Contrary it is if the first be found of full age, and the next within age, and the reason may be for that the king is first seised of him that is within age, with whom the law intends more in presumption to be heire, then with the other, and this title is the best title the king hath, for it entitleth his highnesse to a greater benefite then doeth the second office, and this second office was found vpon a commission graunted more for the kings benefite, than for the heires that should be found by the same, and therefore it were reason that he that is first found heire, haue more

fauour

fauour, if any fauour bee to bee shewed, than he that was last found heire, or at the least for the kings benefite, that the matter be respited till the childe bee of age. Also the said Justice *Townesend* saith further, P. 1. H. 7. fol. 14. that if one be found heire in one Countie, and an other found heire in an other Countie, yet they shall enterplead, which cannot be, as mee seemeth, H. 2. H. 7. fol. 12. for once wee haue a generall ground, that a man cannot sue a generall Liuerie by parcels, but first he must cause an office to bee found in euery Shire where he hath lands, & when all the offices be returned, then to haue his Liuerie, and not before: then in this case where one is found heire in one Shire, & an other in an other Shire, here none of them both can haue Liuery, because hee hath no office found, but in one Shire, and not in the other: and then if there can bee no Liuerie, there can be no enterpleader, wherefore it should seeme in that case they cannot enterplead. And herewith agreeth the booke in P. 8. H. 7. fo. 11. So no enterpleader can bee, but where there is an office thorough the whole found for euery heire in euery County where the lands lye, P. 16. E. 4. f. 4. But it is not alway requisite that there be seueral offices found, for sometimes upon one office found by it selfe alone, there may bee an enterpleader, & that is where two be found heires by one enquest, as two twines, that is to say, two children borne at a burden T. 1. H. 7. 28. And it is to bee noted, that euery enterpleader is to trie the priuitie of blood only, that is to saie, which of these that enterpleade is next heire to him that last dyed seisied, and not to trye their rights in the landes. And therefore if by one office one bee found heire of a generall taile, and by an other office an other is found heire to the same land as of estate in speciall taile, they shall not enterpleade, as it appeareth in H. 21. H. 7. fo. 36. Also they must bee both found heires, to him that last dyed, and by whose death the king did seise: for if one bee found heire to

him that died seised, and an other is found heire to the auncester that died seised, next before ẏ last dying seised, in this case they shal not enterpleade, as it appeareth in H. 2. H. 6. f. 5. Also they shall not enterpleade, but where both heires claime by one selfe title of lands holden of the king, for if the kings tenant die seised of lands holden of other, aswell as of the king, & one is found heire onely to al the lands, & by an other office, an other is found heire onely to the lands holden of other, in this case they shall not enterpleade, as it appeareth in M. 12. E. 4. f. 18. for he that is found heire by the second office, cannot haue liuery, if thenterpleader were found for him, because hée is not found heire of all, as is before remembred. And therefore M. 21. H. 7. f. 35. if one be found heire virtute breuis, and an other is found heire virtute officij, in this case they shal not enterplead, because he that is found heire virtute officij, cannot haue liuery, if thenterpleader did pas with him: for the nature of enterpleader is to haue liuerie for him with whom it is found. And note, that notwithstanding an enterpleader is not to trie the right in the land, but onely the priuitie of blood: yet the issue tried betwiene them, shal be an estoppel afterward in an action vsed of the possession of the same auncester, by whom they claime, as in *Assise of Mortdauncester*, or *Cosinage*, as it appeareth in *Estoppell* 255. M. 4. E. 2. And note, that as two or more shall enterpleade, that claime as heires, euen so shall any other that claime not as heires, but by some other title, if it bée so that their title affirme the Kings possession: As take the case to be this: Land holden in chiefe is alyened to diuers persons, at diuers times, & this found by office, the king seiseth, and after commeth euery of the Alienées, & prayeth to make his fine, and to be restored, now they shall first enterplead, & trie which of their feeffements ought to take place, ere any of thē getteth restitution, as appeareth in 43. *Lib. ass.* p. 20. So it is if any of them come into the Chancery without

proces, & confesse thalienation, as it appeareth by the said bookes, for by the confession, the king is entitled against him that confesseth, aswell as if it had been found by office.

Trauers. Cap. xx.

TRauerse for gudes was at the common Law, but trauers for lands found by inquisition before thescheators is giuen by the statute made in the 34. yeare of E. 3. ca. 14. which saith in this wise. Item acc' est que la ou terres ou tenements sont seisies en la maine le Roy per office del Eschetor, conteignont que le tenaunt le roy ent fist alienation sans conge le Roy, ou que le tenant le roy per seruice de chiualer moruſt seisie des terres et tenements auandits en son demesn come de fee, et son heire deins age, et puis la cause certifie en la Chauncery, et celuy qui terres sont seisie veigne en la chancery, et voit trauerser loffice que suit primes pris per maundement le roy, que les dits terres ne soient my seisiables, soyt a ceo resceu, & soit le proces maundes en banke le roy a trier, et ouster faire droit. This statute extends only to the offices taken virtute brevis, aut commissionis, and not to the offices taken virtute officij. And also by this statut, though the trauerse were found for the party, yet might hee not haue had iudgement, till a Procedendo ad iudicium had been awarded. And therefore was there an other statute made in the 30. yere of the said king, the 13. cha. & tenor whereof is this. Pour les grenouises complaints queux le roy auer oye de son people de ses Eschetours, et de lour male port, il voit & ordeigne del assent auauntdit, que terres seisies en sa maine per cause de garde, soyent saluement gardes sans wast ou destruction, Et que leschetour neyt nul fee de bois, veneson, ne pessoun, nauter riens mes respoigne au Roy des issues et profites, annuels prouenauntes des dits terres,

res ſans waſt, ou deſtruction faire. Et ſil face autrement, et de ceo ſoit attaint, ſoit reint a la volunt le roy, et rende al heire ſes damages au treble, a ſa proper ſuit, ſibien deins age, come de plein age, et eient ſes amies tanq; il ſoit deins age la ſuit pur luy, reſpoignant al dit heire de ceo que ſerra iſſint recouere. Auxint dauters terres ſeiſies en la main le roy par enqueſt de office pris deuant leſchetor, teigñ meſme ceſt ordinance et penance deuers leſchetors. Et ſil eit nul hõe q̃ mette challẽge ou claime as terres iſſint ſeiſies, q̃ Leſchetor maũde lẽqueſt en la chauncellary deins le mois a̅ps les t̃res iſſint ſeiſies. Et q̃ bre luy ſoit luere de certifier la cauſe de ſa ſeiſin en la Chaũcellary, & illeonques ſoit oye ſans delay de trauerſer loffice, ou auterñt mõſtrer ſon droit, et illeõques maũde deuant le roy affaire final diſcuſſion ſans attender auẽ maũdemẽt. Et en caſe q̃ aſcun veigne deuant le Chanceller, & monſtre ſon droit, p q̃l demonſtrance p bones euidẽces de ſon auncien droit & bono title, q̃ le Chanceller p ſa bon diſcretion et aduiz du counſaile (ſil ſemble q̃ il beſoigne auoire counſaile) que il deſſe et baille les terres iſſint en debate al tenant, rẽdant ent au roy le value, ſi au Roy appiertient, en maner cõe il & les auts Chaũcellers deuant luy ont faits auant ces heures de iour bons diſcretions, iſſint q̃ il face ſuertie, q̃ il ne ſerra waſt ne deſtruction, tanq; il ſoit adiudge. Et q̃ les dits Eſchetors preignent tiels Enqueſts en les bones villes, & p bones gents, & de ceo ouertment, & par endentures affaires enter les dits Eſchetours, & ceux des enq̃ſts, come auter foits eſtoit ordeigñ p eſtatuts. An 24. E. 3. Et ſi nul Eſchetour face au contrary de ceſt ordinance ſuiſdit, eit la priſon des ij. ans, & ouſtr̃ ceo ſoit reint a le volũt le Roy.

By the cõmon law before the making of theſe ſtatuts, a mã had no other remedy to auoid a falſe office, but onely his petition. Howbeit in T. 24. E. 3. f. 54. *Wilby* ſaith, that if thoffice had been found before commiſſioners, or any other than theſcheator, the party ſhould haue his trauerſe by thorder of the common law. Paraduenture he may bemoned ſo to ſay, becauſe

becauſe thoſe ſtatutes giue a trauerſe onely to offices found before the eſchetors, making no mention of any offices found before any commiſſioners. Alſo before theſe ſtatutes if after *Liuerie* or *Ouſter le main* ſued, ther had been a new office found, whereby the king had been entitled to reſeiſe, & thereupon a *Scire facias* according to ỹ ſtatut of Lincoln againſt the party ỹ had purſued ỹ liuery or *Ouſter le main*, to come & ſhew why the land ſhould not be reſeiſed, the party in ỹ *Scire fac.* might haue trauerſed ỹ office that was ſo newly found, as I ſhall more plainly declare when I come to ỹ place, *Cap.* 26. *fo.* 80. Alſo *Bab.* ſaid in the eſchequer chamber before al ỹ Iuſtices. Trauers 47. Aũ 8. H. 5. that theſe ſtatuts that giue trauerſe are onely to be vnderſtãd, where ỹ king is entituled to ỹ lãd but for a time, as for wardſhip, alienatiõ wout licẽce, & ſuch like. But if his highneſſe be entitled to the fee ſimple, or the freehold, there he ỹ is put out by the office ſhall not haue his trauerſe, but is put to his petition, Tamen quere, for though the firſt ſtatut be thus, as *Bab.* hath ſaid, yet the ſecõd is not, but general, & therefore may be extended to all offices what matter ſoeuer they conteyne, as appeareth Trauers 37. H. 19. M. 2. where it was found that one had encroched vpon the kings demeanes, which office indeed was falſe, for ỹ the thing ſuppoſed to be encroched was parcell of his mano; ỹ was ſo preſented, & no part of the kings demeanes: in this caſe, the party being put out of ỹ parcel of ground by the eſchetor, was receiued to trauerſe the office, & yet the office entitled the king to the fee ſimple. Alſo thoſe ſtatutes ſeeme not to geue trauerſe, but to him that is put out of poſſeſſion by that office. But the ſtat. of 8. H. 6. c. 16. alloweth any trauers proued by him ỹ feeleth himſelf greeued by any ſuch enqueſt, although he be not put out of poſſeſſion by the eſchetor. And the ſtatute ſeemes alſo to allow trauers of an office taken, aſwell before commiſſioners, as before the eſchetor. Howbeit that ſtatut giueth no trauers, but onely maketh thereof a reher-

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sall. These statutes that giue the trauerse, seeme to offer it generally to any man that will desire it, so that both put challenge or claime to the lands wherof he is put out by any office. Howbeit the exposition hath ben otherwise, that is to say, that his challege or claime must be such, as the Law will admit & allow, for euery man can not trauerse that would, or that maketh his challenge or claime: for these statuts are intended where the king is entitled by office onely, for if his Highnesse be entitled by an other record besides the office, & entitled as it were by a double matter of record, ỹ party shal neuer haue his trauerse. As take the case to be this, a man is attainted of Treason by act of parliament, or otherwise by verdict, & afterward it is found by office that the said person attainted was seised day of the treason comitted of certaine lands, which in deed were neuer his lands, but mine, in this case if I be put out of my land by this office, I cannot trauers it, Causa qua supra, and yet I am a stranger to this record, as appeareth in 40. Ass. 24. H. 49. E. 3. 11. H. 10. H. 6. 15. H. 4. E. 4. 22. & T. 14. E. 4. fo. 7. But if there be no such record of attainder, I shalbe receiued inel ynough to trauers the office, alleaging suit to enure me to a trauers, that there is no such record of attainder, as appeareth in H. 4. H. 7. E. 7. Also he that is found heire by office, shall not trauers ỹ same office that so findeth him heire (if that part of the office that concerns the tenure in chiefe be true) although the rest of the office be false: and therfore if the kings tenant dye seised, his heire being of full age, & by a false office ỹ heire is found within age, in this case, he cannot trauers this office, as appeareth T. 5. E. 4. 3. and the reason of it is, because the heire cannot falsifie the office that he himselfe is to affirme by his Liuerie when he shall sue it: For though he would cause an other office to be found according to the trueth of the matter, yet it were not to ỹ purpose to help him, for the best office shall be taken euermore for the king, that is to say, that that giues his

his Highnes most auantage, & the heire driuen to sue his liuery vpon the office onely, for seeing the king is bound by an office as well as is the heire, it is reason if any be better for him than other, ẏ he be bound to that only, & not to the other, & the law presumes the one office to be as true as thother, vntill such time a triall thereof be made, which triall cannot be by the heire, for he is bound as I said before by the office that is found, without any further choise hauing no prerogatiue in such matters, & if he should be receiued to his trauers in this case, then vpon the trauerse found for him he should haue the lands out of the kings hands by an *Ouster le main*, without any liuerie suing, as lands that the king ought not to haue seised, which were inconuenient. For euery way the king ought to haue seised those lands against any that claimeth to be heire, vntill such time as liuerie be sued thereof. Like law is it where ẏ kings tenant dyeth seised of land in diuers counties, his heir being of full age, & in one county, ẏ same heire is founden within age, and in another county he is found of full age, in this case the heire shall not trauerse the office that found him within age, *Causa qua supra*: for then for the lands in one countie he should haue them out of the kings hands without any office or liuerie suing. And this case appeareth in Trauers 39. H. 32. H. 6. But if an office find ẏ my father held his lands of the king in chief by knights seruice, where in deed he held not of him in chiefe, in this case I shalbe receiued to trauerse this office. For if I should sue my liuery vpon the same, I should be concluded euermore after to say, but that the lands were holden in chiefe of the king, and for ẏ cause I shalbe receiued to my trauers as euerie stranger shall be in the like case: for if my trauerse be true, then can the king haue no cause to seise those lands, and therefore not like the cases before remembred, as appeareth M. 1. H. 7. fo. 3. & 28. The words of ẏ statutes be, ẏ he whose lands be seised shal trauers, or he ẏ putteth challeng or claime

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to the land so seised. These words be not so generally vnderstood as they be spoken, for most men vnderstand them, that he that will challenge or claime but a terme of yeares onely, shall not be receiued to his trauerse, where the king is intitled to the freehold by thoffice, as where it is found, that the kings tenaunt is seised of certeine lands, & is dead without heire, whereby the landes ought to escheat to the king, commeth one and saith, that he is tenant for terme of yeares of these lands, of the demise of a stranger, without that, that he that is supposed to be the kings tenant, was euer seised of these lands, this trauerse lyeth not in his mouth: for hee that hath but a chattel, shall not be receyued in any case to falsifie the Record that giueth any man interest in the freehold, although hee be a straunger to that Record. Contrary law is it of him that hath a freehold, or inheritance in the land, for they shall trauerse the Record in such case. Like law is it, where the king is intitled but to the wardship of the heire of his tenant, he that is Fermer of the demise of a stranger shall not trauerse his office, although the king be not intitled thereby to any freehold: for it was not the minde of the makers of these statutes to helpe them that claime, but Chatels which are accompted in law as nothing, because they perish and abide not. Et de minimis non curat Lex. Howbeit, learne what the Law will in these cases, for I haue seene no beekes of them. The Lord in title of wardship shall trauerse the office, and yet he claymeth but a terme of yeares in the land, as where it is found by office that such a one held lands of the king in chiefe, and dyed, his heire wythin age, where in deed hee holdeth no such land of the king, but only of mee by knights seruice, in this case, I that am Lord shall trauerse this office, that is to say, shew how they bee holden of mee by knights seruice, without that they bee holden of the king, as appeareth in M. 1. H. 7. fol. 3. For there it toucheth the

Lords

Lords inheritance in the right of his seigniorie, and because he by the false office is to loose the profit that is presently fallen, by reason of his seigniorie, it is reason he be receiued to trauers the office. But if hee were but Lord in Socage, hee should not be receiued to his trauerse, because he therby can make no title to the wardship of the body & lands of the child, for it is a good generall ground, if the king be once seised, his Highnes shall retaine against all other that haue no title, notwithstanding it be found also that the king had no title, but that the other had possession before him, as appeareth in 37. li. ass. P. 11. where it was found that neither the king, nor the partie had title, and yet adiudged that ye king should reteine, for thoffice that findes the king to haue a right or title to entre, makes euer the king a good tytle although it be false, and his Highnesse thereby may take possession against any other that is seised of the lands, and reteine untill such time as thoffice be trauersed by him that hath title and tried to bee a false office. And therefore no man shall trauerse thoffice vnlesse he make him selfe a tytle: And if hee cannot proue his title to be true, although he be able to proue his trauerse to be true, yet this trauers will not serue him. As for an example, it is found the kings tenant died seysed of certeins lands that he held of the king in chiefe; his heire being within age, where in diede he had made a feoffement in his life time to another of those lands, it is no trauerse for the feoffee to say he dyed not seised, but he must first make himselfe a title by the feoffement: & for a much as it is found that the lands are holden in chiefe, if he will make his title good against the king, he must shew forth a licence of alienation, or a dispensation therof, or els he must trauers the tenure in chiefe, as well as he shal do the rest of thoffice, otherwise his title is not good, as appeareth in P. 36. E. 3. *Trauers* 44. & 46. *Lauerie* 18. P. 36. E. 3. f. 4. P. 3. H. 2. 14. & M. 3. H. 7. f. 24. Howbeit *Hussey* holdeth opinion T. 1. H. 7. 28.

that

that no man may trauers ẏ tenure but the Lord, or the heie, vnlesse his title be found by office, but whether the law be so or not learn, for as I take it the lord and euery stranger that hath a title against the king, making his title, shall trauerse the office before his title be found by office: for when the trauers is found for ẏ party, his title now appeareth of record, and by the trauerse found, the office which was the kings title, is vtterly destroyd and gone, so that now the king is not to make any liuery of the lands to any person, but onely to amoue his hands from the same, with the meane issues and profits, as one that had no cause to seisle them. And therfore euerie man may enter now that will, if he haue right or title of entre to the lands, for the king deliuereth them to no person certein, but only ridds his owne hands of them as he that had neuer seised them, but otherwise it is where the king is to make liuerie, for there his highnesse must bee enformed certeinly by matter of record, who shalbe his tenant, and who it is ẏ ought to receiue the liuery at his hands, least his highnes be deceiued in thadmitting of his tenāt, which is ẽ ought to be a great matter toward the lord, and therfore the cases be not like, wherfore I think a man may trauerse by force of the statuts, without hauing their title first found by office: ẽ so be our bookes P. 35. E. 3. Trauers 44. P. 12. E. 4. f. 18. P. 26. E. 4. f. 4. ẽ 43. lib. ass. P. 20. Howbeit Trauers 45. T. 5. E. 4. f. 5. seiues to way to ẏ contrary hereof, and P. 12. H. 6. also, where it is said, that if it be found ẏ the kings tenant died seised, where in deede he was iointly enfeoffed wt me, now can I not trauerse this office, except another office were found for me. But contrary law should it be, if I had bin found by the office iointenāt with him for terms of life, where in deed I was iointenant with him in fee simple, in this case I may trauers thoffice, because mention is made of me in the said office, this booke case admitted to be law, yet it varieth from ẏ case before remembred of the stranger

that

that trauerſed thoffice, for thoffice is true, and when it is found by office that hee dyed ſeiſed, this may bee although the ſaid dying ſeiſed were ioyntly with another, for any thing that is expreſſely found to the contrary, and then the king here is to admit another tenant, as in the caſe of the liuery, before whom as yet he hath no credible information, that is to ſay, by matter of record, and then it is like to the caſes of tenant by the curtiſie, tenaunt in dower, and the deuiſee which in no wiſe can bee admitted to their eſtates vnles mention be made of them in the office or ſome other office or matter of record found for thē, as appeareth in P. 9. H. 7. f. 24. Briefe 618. P. 46. E. 3. & M. 11. H. 8. Deuant f. 17. and for none other reaſon as I gather it, but only for ỹ thoffice is true, & they are to be admitted ỹ kings tenants which cannot be but by information by matter of record, Vt ſupra. Thenlet vs reſort to the place we were at before: ỹ is to ſay, no man may trauerſe with the king, vnleſſe he make vnſelf a good prefit title, as to ſay ỹ the tenant which is ſuppoſed to die ſeiſed did inſeffe him, or ỹ a ſtranger was ſeiſed & did inſeffe him, without that, ỹ he died ſeiſed. And ſo note by the way that he may cōney his title as wel frō a ſtranger, as frō him that is ſuppoſed to die the kings tenaunt, as appeareth in P. 36. E. 3. Trauers. 44. and when he hath made thus his title, then he muſt trauers the kings title, which is thoffice, for it is not enough for him to reſt vpon his owne title, although it be neuer ſo ſtrong, without anſwering the kings title, yea although it were good againſt a common perſon, yet againſt the king it is not ſo wout trauerſing the office. And therfore if he wil ſay ỹ his tenant in his lifetime did leuy a fine vnto him of theſe lands, ſur conuſaunce de droit, cōe ceo quil ad de ſon done, by vertue whereof hee was ſeiſed, vntill ſuch time as he was put out by this office, and prayeth reſtitution, this is no plē againſt the king, and yet this matter were a good plē in Aſſiſe of Mordaunceſter brought by the

heir, for in that case he should be estopped by this fine, which is executed to say the contrary therof, that is to say, that his father dyed seised without shewing how his father got the possession againe since the time of the fine leuied. But it is no plee against the king, for the king cannot bee estopped, namely in this case, being a stranger to the record. And also the statutes giues a trauerse, and by this maner of pleading he taketh no trauerse. Like law is it, if it be found by office, that the kings tenant in chiefe infeoffed one B. without licence comes one D. and saith, that hee dyed seised, and his heire entred and infeoffed him by the kings licence, this is no plee without traversing the feoffement made to B. and yet against any common person it were a good plee, but not against the King, for his title must bee answered fully: and this is the feoffement, and these cases appeare in Trauers 17.P.46.E.3.f.43.lib.ass.p.20. Also it is not sufficient to trauers one of the kings titles, but hee must trauerse them all, for though the kings title that he is seised by, be found not good, yet if there be any other record that makes the king a title whereby he may retaine the lands, the party must auoid also that title, or els he gets no Ouster le maine M.9.H.4.f.7. but learne if there bee no such record in Esse, or being at the time of the trauerse tended, & hanging the plee vpon the trauerse a new record, that is to say, an office is found which intitleth the king whether in this case the party shall be driuen to trauerse his office or not, ere he haue his Ouster le maine. And it seemeth he shal not: for so he might be delayed of his possession infinitely by finding one office after another, wherefore this office found, hanging the trauerse shall be accounted in lawe as though it had bin found after the party had had his Ouster le main, in which case then the party vpon the first trauerse found for him, shall be restored to his possession by an Ouster le maine, and then after vpon a Scire facias sued against him

him to shew why these lands should not bee releised, vpon this new office found for the king, hee shall bee receiued in that Scire facias to trauerse this new office. How bee it this auantage hee winnes hereby, that is to say, he then trauerseth with the king, keeping still his possession, where els hee should trauerse being still out of possession. And this case ye may finde T. 11. H. 4. f. 80. & M. 13. H. 4. f. 8. Thus may ye see when a man trauerseth with the king, hee must trauerse all the kings titles that haue then their being by matter of record, and not bounden any further to answeare for that time. Then let vs see how the king shall reply vnto this trauerse: and in that it is to be noted, that ỹ king hath a prerogatiue that a common person hath not, for his highnes may chose whether he will maintaine the office, or trauerse the title of the party, and so take trauerse vpon trauerse, or when al his titles be trauersed, his highnes may chuse to maintein them all, or els but one of them P. 13. E. 4. f. 8. But then note, that if hee maintaine but one, that is to say, take issue but vpon one which is found with him that tendred the trauerse. In this case the party shall haue his Ouster le maine, notwithstanding there be no issues taken vpon the other title H. 4. H. 7. f. 5. but whether the king shall euer take auantage of thother title after or not, this is to be seene ỹ I thinke he should, for though the other titles shall not in this case let the party of his Ouster le maine, yet it seemes the king may call the party againe by a Scire facias to answeare his other titles, or els his highnesse to releise, as I said before, for no Nient dedire can prejudice the King, Nec tacita renunciatio, like as it may doe a common person. And therfore seeing hee did not renounce his other titles openly nor expressely, it seemeth his highnesse by his prerogatiue shall haue auantage of them at any other time, when it shall bee his pleasure. And these cases ye may see M. 9. Henry 4. fol. 6. How bee it it appeareth in the

said booke of P.13.E.4.f.8. that after the king ioyneth an issue upon a trauerse, his highnes cannot in another terme waine his issue and take a new, for so the partie might be delayed infinitely of his right, which should be as it were a wrong committed vnto the party, and the king by this prerogatiue may do no man wrong: but after issue ioyned he may demurre in law, and waine the issue, for there is no matter chaunged, but the old remaineth M.3.E.4 f.26. And by the demurrer the law presumeth that the issue was ioyned, and so might be a Ieofaile, and therefore his highnesse may demurre in Law after issue, but not change his issue, and take a new. And note that if the party take a trauers which is iudged insufficient in the law, this is peremptory vnto him, and he shall not be receiued after to take a newe, as appeareth in 40.Ass.24. Howbeit T.14.E.4. the contrary opinion is holden, and that it is not peremptory, because it proceedeth in the Chaunceric, which is the Court of Conscience. But as to that a man may answeare and say, that a Chauncellour hath two powers, the one absolute, the other ordinarie, and this trauers is before him by an ordinarie power, in which case all things touching the same, must proceed as it should before any other ordinary Iudge of the common Lawe, and therefore it should appeare by a booke in H.4.H.6.f.2.& H.21.H.4.f.25 P.22.E.4 f.9. Trauers 12.H.3.H.7. that if the partie be nonsuit in this trauerse, it is peremptorie vnto him, for so might he delay the king infinitely, tamen quere: and learne whether one may proceed with a trauerse, the heire being within age, or els shall tarry til he be of full age, for the booke is in T.5.E.4.f.5. that he shall tarry till the heire commeth to age. But in this question one may make this distinction, that is to say: Whether the trauerse be tended by a straunger, or by the heire (for sometimes it happeneth, that the heire shall trauerse as well as a straunger.)

For

For no more than a stranger can haue Ouster le maine without trauersing all the kings titles, no more may the heire haue liuery without trauersing all his titles, and then if the trauerse bee to be taken by the heire, hee shall not bee thereunto admitted vntill hee bee of age, because that before that time hee hath no cause to haue his liuery. But that reason serues not where the trauerse is to bee taken by a stranger, and therefore it should seeme that he should haue it by and by: For he hath cause to haue an Ouster le maine forthwith, and that with the meane issues and profits, and therefore it were no reason that the nonage of a third person should hinder him with whom he is not to plead or to try any right but only with the king.

For if the child haue right, hee may enter vpon the stranger after he hath his Ouster le maine and try his right with him: and so at no mischiefe. And note as I said before that the heire must trauerse all the kings titles ere he can haue liuery, and that whether the kings title bee in his owne right or in the right of another, his owne right, as if there bee a record that proues this land to bee aliened without the Kings licence or that thauncestor of thinfant that would sue his liuery was but tenant for terme of life, the reuersion to the king, and hath made a feoffement to the kings disheritance or such like, in these cases notwithstanding the king did not seise by vertue of these records, but onely by vertue of the office, which found, thauncestour of thinfant dyed seised the kings tenaunt in chiefe of estate in fee simple, yet the heire getteth no generall liuery vpon that office vntill such time as hee hath auoided these other records. And if hee haue it before: it is a cause of reseiser. So it is where the Kings title is in right of any other, as if one bee found heire by office, and after by another office another is found heyre

of the same land to the selfe same auncestor, in this case he that was first found heire cannot haue his generall liuery vntill such time as hee hath destroyed the other tytle, eyther by an enterpleder or a trauers, for if it so come to passe that he cannot enterpled, then must hee trauerse or by some other meanes auoid the record ere hee can haue his said generall liuery, as if hee sue his generall liuery otherwise it is then missued, and a good cause giuen to the king to reseise. And this enterpleder or trauerse beetweene them that claime as heires is by the order of the common law and not by statute, and can neuer bee, but where both their tytles bee found first by office, and the reason is, because that as soone as the matter is discussed betweene them, hee for whom it is found shall forthwith haue his generall liuery, which hee can neuer haue if his tytle be not first found by office: and therefore not like the case where a straunger trauerseth with the king that is to haue but an Ouster le maine, for there the King had no right to seise, and therefore his tytle neede not to bee found by office as I haue said before. But in the other case whosoeuer shall claime the land as heire, his highnes hath right to seise in the right of the said heire, and to haue his primer seisyne or wardship as the case doth require. And therefore his tytle must bee first found by office: but where one heire is to trauerse with another heire during the kings possession, this shall not be vntill hee that is first found heire by the office come of age, because vntill that time, the lands ought to remaine in the Kings hands, and then hee to haue liuery: but whether hee that was first found heire should tarrie for thage of him that was last found heire, I haue said my minde therin before in the title of Enterpleder ca. 19. But where a stranger is to trauerse, he shall not tarry for thage of the heire for the causes before remembred.

And

And so there appeareth to be a great difference betweene a trauerse taken by him that is a straunger, and by him that is heire. But at this day most liueries that be sued are speciall liueries, which conteine in themselues a pardon, and therefore the misusing of them is dispensed withall by the words of the pardon contained in the said liuery. And so many of these things that I haue spoken of before are not much to bee obserued if the liuery or Ouster le maine be not generall. (For I see no let but that an Ouster le maine may bee graunted speciallie as well as liuery.) And last of all, it is to be noted that this trauers extends not to euery record that entayleth the King, but onely to such records as be trauersable, as an office or such like, as I shall shew my minde therein more fully in the chapter of Petition. Other trauerses there be which be trauerses by order of the common law. And not by any Statute, as trauerses upon Endictments or Presentments, whereof I entend not to entreat in this place, among which trauerses there is also by order of the common law a trauerse concerning goods and cattels of persons attainted, for the which a man shall trauerse with the King, although his title thereunto bee by double matter of record. As take the case table, a man is attainted of treason, or felonie, or outlawed in a personall action, and after by office is found that he was possessed of a horse or any other goods as his owne proper cattell, where in deede they be the goods of a straunger, in this case the said straunger shall trauerse this office with the King, 9. 4 E. 4 fo. 24. 9. 13, E. 3. fo. 8. & 9. 47. E. 3. fol. 26. So is it if it be found by office that a man outlawed in a personall action is seised of certaine lands, which indeede are lands, and the chefetour by force of that false office takes the profites, in this case I may disturbe him